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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

HEALTH CARE ACCESSIBILITY ACT

* MONDAY, APRIL 14, 1986



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Cooke, D. S. (Windsor-Riverside NDP)

Bernier, L. (Kenora PC)

Davis, W. C. (Scarborough Centre PC)

Jackson, C. (Burlington South PC)

Miller, G. I. (Haldimand-Norfolk L)

Offer, S. (Mississauga North L)

Reycraft, D. R. (Middlesex L)

Stephenson, B. M. (York Mills PC)

Swart, M. L. (Welland-Thorold NDP)

Ward, C. C. (Wentworth North L)

Substitutions:

O'Connor, T. P. (Oakville PC) for Mr. Bernier

Reville, D. (Riverdale NDP) for Mr. Swart

Wiseman, D. J. (Lanark PC) for Miss Stephenson

Clerk: Carrozza, F.

Witnesses:

Individual Presentations:

Watson, Dr. R. B.

Homer, Dr. J.

Gervais, Dr. C.

From the Parry Sound Medical Society, District 9, Ontario Medical Association:

Higgins, Dr. T., President

Baxter, Dr. I., Representative to Ontario Medical Association Council

Individual Presentations:

Green, Dr. G.

Komer, Dr. L. D.

Brennan, Dr. M. J.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Monday, April 14, 1986

The committee resumed at 2:03 p.m. in room 151.

HEALTH CARE ACCESSIBILITY ACT
(continued)

Consideration of Bill 94, An Act regulating the Amounts that Persons may charge for rendering Services that are Insured Services under the Health Insurance Act.

Mr. Chairman: I call the meeting to order. We have a full agenda this afternoon.

There are a couple of things I bring to your attention. When the United Senior Citizens of Ontario Inc. were before us, they said they had heard about clinics that were demanding upfront annual charges and they would send the information to us. I received it this morning. We will photocopy it and send it around to members. It concerns the Queensway Medical Clinic in the Lakeshore area of Toronto.

You will notice on our agenda for today and tomorrow we have managed to work everyone in, with the minister starting at two o'clock on Tuesday. There are two individuals we have not been able to contact. We have tried any number of times, as recently as 15 or 20 minutes ago, and have been unable to reach them. We will write them letters stating that and ask them to get back to us with something in writing if they would like. We will also let them know we are not going into clause-by-clause study right away.

Mr. Jackson, did you have a point on that?

Mr. Jackson: In the light of the fact it is somewhat safe to work on the assumption that there may still be two openings in tomorrow morning's session, and given that there were two or three groups identified earlier as just missing the time line for filing, can we indulge the committee's patience, without prejudice, by inviting the medical students' association for one of those 15-minute spots? It is not as though we are inviting another group of doctors from whom we have heard. These are medical students from whom we have not heard. I request the committee's tolerance in making that accommodation.

Mr. Chairman: We have a motion outstanding at the moment which says we will not be inviting those groups. I need consensus from the committee to allow that to take place. It would be for a 15-minute slot tomorrow morning.

Agreed to.

Mr. Chairman: Do you think we can contact them?

Mr. Jackson: Yes. I will give the clerk the phone number for the president of that group, Mark Priess.

Mr. Chairman: This is without prejudice in the sense it does not

mean we will invite the other groups that also applied. An argument can be made that we have not heard from the students coming into the system at this point, and it may be an appropriate thing to do. We will try to contact them. Is there anything further?

Mr. G. I. Miller: We checked with the clerk's office last week and he indicated we would be sitting on Friday afternoon, but it is Friday morning, is it not?

Mr. Chairman: As far as I know, we are sitting only on Friday morning. Too many members had things booked for Friday afternoon. We cannot meet on Monday because the rooms are going to be taken for the reception following the speech from the throne.

Mr. G. I. Miller: I just wanted to be sure.

Mr. Chairman: We may decide to sit a little longer on Wednesday or Thursday if we think it will help us conclude the clause-by-clause study.

Mr. Jackson: One other item has to do with the questions that were raised by one of the Burlington doctors vis-à-vis the Ontario health insurance plan payment and procedure. Has the Ministry of Health been able to generate the information the committee requested with respect to the questions raised? The reason I raised that one--

Mr. Chairman: Remind me of the question. It does not ring a bell.

Mr. Jackson: It was in the whole area of persons ineligible in Ontario, the numbers and the reasons why. That information would be helpful to the committee, prior to meeting with the minister. There are other areas where we may not need the minister if we get the information at a later date.

Mr. Chairman: It is being noted and I will see what the chances are of getting it. We have just received one here on the status of the Timmins district hospital capital plans, which you may recall. We will circulate that as quickly as we can.

Mr. Chairman: Dr. MacIntyre and Dr. Blackman are not here yet. Since Dr. Watson is here, why do we not begin with you, sir? Please come forward and take a seat directly in front of me.

Mr. Jackson: Dr. Watson, I presume.

Dr. Watson: Dr. Livingstone, I presume.

Mr. Chairman: This is the elementary doctor.

Dr. Watson: May I have a copy of my brief?

Mr. Chairman: Certainly. Members should mark this brief as exhibit 149.

The way we operate is that you take us through your brief, and then I will open for questions.

DR. RONALD B. WATSON

Dr. Watson: My name is Dr. Ronald Watson and I practise optometry in

Burlington. I am a committee member of the College of Optometrists of Ontario, a board member of the Optometric Institute of Toronto and past clinical instructor at the school of optometry, University of Waterloo. I appear before you today to express my views as a private practitioner.

I am deeply concerned about the legislation proposed by the government of Ontario in the nature of Bill 94. This bill eliminates the ability of optometrists to retain our direct dealing with patients when, by the government's own admission, overbilling by optometrists has not been a problem.

2:10 p.m.

My profession is represented in 234 villages, towns and cities in every corner of the province. Overbilling or the charging of a fee in excess of that put forth by the government as being fair is not a problem as far as optometric fees are concerned. Approximately two per cent of the optometrists throughout the province charge in excess of OHIP rates, and patient accessibility is not affected in any instance.

For each optometrist opted out, another opted-in practitioner can be found within half a mile. This is true in all 234 optometric locations. Optometric patients now have complete freedom in choosing an opted-in or opted-out optometrist without any freedom-threatening legislation by government. To my knowledge, there has not been one instance of patient hardship as a result of overbilling by any of the two per cent of optometrists who have opted out of the plan.

I have been an optometrist independent of the government plan since government first introduced the Ontario medical services insurance plan a number of years ago. Patients have the freedom to choose my services and be reimbursed approximately 80 per cent by OHIP or they can seek the services of other optometrists within a quarter mile of my office and be fully reimbursed by OHIP.

The freedom of patients to choose the care they desire is reflected in the growth of a practice. If people are happy with the care they receive, they will support the practice. If not, they will not and that practice will die. These are the checks and counterbalances that exist in a free enterprise system. Patients who wish to see me and who are unable to pay above OHIP rates are accepted without question. I know of no opted-out optometrist who would not make financial concessions to patients in financial difficulties.

Over the past 10 months, I have added more than \$50,000 of sophisticated computerized instrumentation to my office which I do not believe can be found in any other optometric or medical office in Burlington. This state-of-the-art instrumentation enables a more accurate diagnosis and treatment of my patients' visual problems. Many patients prefer a practitioner who keeps up to date with the latest developments and do not mind paying a small fee for this. In the present mode of practice, I feel I am able to devote more of my time and personal attention to each of my patients and provide better service. This relationship with my patients is being directly threatened by Bill 94.

The lifeblood of a free society is its small business, and all self-employed professionals fall within this definition. My practice employs two other optometrists and a support staff of six. One of my six employees is a retired lady, one is a separated parent supporting two children, one is a working mother whose husband is out of work, one is a student and two are homemakers. If this unfair legislation is passed, I am faced with the

difficult decision of possibly terminating two of these excellent staff members. Has government considered the many cases similar to this that would directly result in unemployment due to their policies?

I am sure the record of optometry in Ontario bears out that there is no health care accessibility problem under the present OHIP conditions. The system may not be perfect, but changes can be implemented to correct some of the shortcomings.

I wish to thank the committee for this opportunity to express my views on this most important matter.

Mr. Chairman: Thank you, Dr. Watson. We appreciate you being here and on time so we could begin. Can you tell us the functions of your six employees?

Dr. Watson: One is a bookkeeper, two are full-time receptionists, one is a filing clerk and one is an optometric aide. I do not know whether I have gone through them all.

Mr. Jackson: My questions have to do with the point raised about the purchase of equipment. That is a considerable amount of money to be investing. Is this not generally available? I am surprised to hear that you may be the only office in the Burlington area that has this equipment.

Dr. Watson: To my knowledge, that is correct.

Mr. Jackson: This is the cost of operating your office. Do you mind sharing with us what your approximate overhead costs are as a doctor with salaries and so on?

Dr. Watson: I do not have the figure at hand. I can get the information for you. I do not happen to have it with me.

Mr. Jackson: But it does represent a considerable amount of money. I assume you are going to the bank for some of the cost of expanding your equipment and your business.

Dr. Watson: That is correct. As far as that part of it is concerned, the expenses are \$2,500 per month for the payback on the loan as well as changes I had to make in the physical office to accommodate the new instrumentation. There was approximately \$50,000 in equipment and \$30,000 in renovations for a place to put the equipment.

Mr. Jackson: I understand from a presentation by your parent optometrics group that not all the functions or services you perform are covered by OHIP benefits.

Dr. Watson: That is true. That was pointed out in the brief by the Optometrists Association of Ontario. There are many aspects to the accessibility problem. I did not get into that because I was aware that other groups had discussed the fact that all services that fall within the realm of optometric training are not covered by OHIP. That is something that should be addressed.

Mr. Jackson: Is it safe to say there is a general perception among members of the public that when Bill 94 is implemented, they will no longer get a bill from you for anything?

Dr. Watson: I do not know.

Mr. Wiseman: What is the difference between what you charge and what most doctors who are opted in charge?

Dr. Watson: In my practice, the difference is \$8.85. In general, we find that patients will average one examination every three years. That is a ball-park figure. We are talking about a difference of \$8.85 over a period of roughly three years. We are not talking large numbers.

Mr. Wiseman: Do you charge senior citizens?

Dr. Watson: Generally speaking, no. It has been suggested by the Ontario Medical Association that all senior citizens be exempt from extra billing, as one of the alternatives to the problem that has arisen. I do not know of anyone who would disagree with that. Personally, I would be quite happy to go along with something of that nature.

Mr. Wiseman: Some have mentioned that 50 per cent of what they would normally overbill is forgiven because of limited income, such as senior citizens, or people on social services or some such thing. Would yours run that high?

Dr. Watson: I do not think so. If patients who seek my services are on mother's allowance or any type of assistance, they are not billed any differently. OHIP is accepted as full payment.

2:20 p.m.

Mr. Chairman: Thank you for taking the time to come in to see us today and to express yourself.

Is there anyone in the room who would like to make a presentation? If Dr. MacIntyre and Dr. Blackman are not here, perhaps Dr. McMonagle would like to come forward. Is it possible that any of our deputants forgot this was opening day? No, just my assistant.

Dr. Homer has arrived. He is not due until later. The clerk will see whether he is available to come back in. We will not take a recess until we find out.

The answer Mr. Jackson was requesting has arrived. The power of the chair is incredible, as we all know.

Dr. Homer, I will let you settle down for a second. The other deputants who were to precede you have not yet arrived. If you would like to come forward, we would be happy to hear your presentation. Unfortunately, our Xerox machine has gone kaput. Members will be able to hear this from the dulcet tones of the doctor, and not be able to read along. I know your attention spans will last as long as the brief.

Dr. Homer, take us through it any way you would like and we will open it to questions following that.

DR. JOSEPH HOMER

Dr. Homer: I thank you for the opportunity to be here. It is a remarkable demonstration of accessibility. I did not think I was scheduled

until 3:15 p.m. I wish I could guarantee the medical care system is equally as accessible.

I have been a general practitioner for about 20 years. I practise in Hamilton, Ontario. I have always worked within the Ontario health insurance plan system. I am heavily involved in hospital administration; I sit on the Hamilton-Wentworth District Health Council.

I am here today representing myself, an individual physician, because I am worried and frustrated. This present debate is probably the most significant piece of domestic legislation since the post-war years. In one fell swoop, Ontario may nationalize an entire profession.

I wish I felt I did not have to be here. In fact, I wish I was working at my craft in Hamilton this afternoon. At the very least, I wish I was at the opening-day Blue Jays baseball game, a sentiment that may be shared by many on this committee.

However, I am worried and concerned that the public and legislators do not appreciate or understand the coming changes that may happen in the health care system if the proposed Bill 94 is enacted in its present form. I am sorry you were not able to have my brief photocopied; I wanted to take some editorial licence and depart a bit from the brief. It has been roughly two months since I wrote this draft brief entitled Doctors: The Reluctant Bureaucrats. It was originally intended for publication in the Oakville newspaper, in the city in which I live.

However, much has happened since I wrote this initial article. I dithered and worried about appearing here, but my final conclusion was I felt I had to be here. I have been appalled and disappointed at some of the misinterpretations by both the public and the legislators over this proposed legislation. I have spoken to many senior citizens who have told me that if this legislation is defeated, it will automatically mean that doctors will be required to extra bill in all instances.

We spoke to an executive committee of the senior citizens' coalition in Hamilton. That committee was most upset at extra billing by podiatrists. They did not understand that did not relate to doctors, and that doctors did not control the billing practices of podiatrists. We do not control that. One senior citizen on the executive committee was concerned that doctors were receiving kickbacks from pharmacists for prescriptions that were being written. On the basis of that illogical, misinterpreted information and that lack of sophistication, that senior citizens' coalition sent a telegram to the legislative body of Ontario supporting the ban on extra billing.

I recently read about, and saw on TV, two health care economists who made predictions and conclusions that this entire fight was about the billing practices of 1,000 or so specialists. I ask the members of this legislative body to consider the statistical information they gather because it may be correct, but I ask you to place no credence on the opinions of these two individuals who were erroneous and unjust in their conclusions. I am here to tell you that the fight is not over money. I have always worked within the Ontario health insurance plan system, and I will gain or lose nothing financially by this legislation.

Also, I am not toeing the line of the Ontario Medical Association. I think it has been wrong and naïve. There has been ample and valid testimony here that there have been incidents where patients have suffered some

financial difficulty, have had denial of access or difficulty in access because of extra billing, and have suffered embarrassment because they have had to submit to some means test on the part of physicians. That is true of the OMA. I am critical of the Ontario Medical Association, of past governments who have tolerated it, and of the profession and those members of the profession who have espoused the practice of extra billing in some instances where it has been wrongly and insensitively applied.

However, I am not yet completely submitting to the proposed legislation of the government. It will effectively conscript the entire medical profession into state employment without any enacted guarantees for a specific government commitment to a fair compensation process. It is a terrible slur on a profession which has an unparalleled record of public service to the people of Ontario.

If enacted, the contractual rights of this profession will be abruptly overridden. Further, the legislation proposes that deviation is a criminal act, and the financial penalties proposed upon conviction of such an offence are so out of proportion as to be ludicrous. Also, the legislation seems to encourage citizens to inform on their physicians.

The legislation punishes all physicians, while, in reality, the overwhelming majority of doctors, some 88 per cent, have traditionally co-operated with the medicare system with reference to accessibility of care and the OHIP schedule of fee structuring.

2:30 p.m.

If the public at large feels the final and ultimate reputation of the medical profession is that of greedy, selfish monsters, it will do nothing to curb the bitterness of 88 per cent of the doctors who, up until now, have tried to co-operate with the government to effectively utilize the limited resources for health care.

Any spirit of co-operation that has existed to do the best possible job with the funds available will disappear overnight, to be replaced by a relationship based on anger and resentment. I believe this potential adversarial position will throw the Ontario health care system into chaos. The resulting clashes will create unacceptable turmoil and deterioration in the level of care. An angry, alienated profession may be less willing, in the future, to provide the traditional accessibility, skills and compassion to the people of Ontario.

Up until the present, doctors have considered themselves to be free individuals, traders of definite skill and expertise. They have worn this title proudly considering the crucial importance of the services they offer.

In Ontario, we have probably the best medicare system. I do not think we have to apologize for it to anyone. It is not perfect to be sure, but it is affordable and accessible to what appears to be the vast majority of the population. It is delivered by physicians who are mostly content with the system and who work largely in co-operation with the government. To dramatically run the risk of fundamentally altering this system may have long-term implications for the public. There is an old axiom: If it ain't broke, don't fix it.

Is the cost of the solution proposed by this legislation appropriate to the problem the government is trying to address? This question is vital to the

whole issue, since what the government is proposing will lead inevitably to a fundamental change in the health care delivery system.

By now, this committee has sat long hours and probably many weeks listening to the various sides. Presentations have been made here, probably more eloquent than mine, and yet I find the two major protagonists in this struggle, the government and the Ontario Medical Association, seem to remain as completely polarized now, in April, as they were when this legislation was first introduced. In introducing the legislation, I know the government felt it had the overwhelming majority support of the people of Ontario for this legislation. I challenge the Minister of Health (Mr. Elston) that he is wrong. He held a series of public forums which were unmitigated flops. The one in Hamilton was attended by some 45 people.

The Hamilton Academy of Medicine sponsored a public forum, inviting both the public, the OMA and the politicians to appear. It was held approximately a month ago. I am sorry the Premier (Mr. Peterson) and the Minister of Health were not able to attend, but the government was adequately and wisely represented by Chris Ward, the parliamentary assistant to the Minister of Health who is here today. I think he would agree that outside of the opportunity afforded to the public by these committee hearings, that may have been the single, most informative session for the public on this great debate. I came away from that forum with a number of conclusions.

Public opinion seemed to be equally split, about 50-50. I came away feeling the public was surprised and chagrined by the hostility and the bitter rhetoric of both sides. I do not think the public wishes to see its doctors quarrelling dramatically with the government. I do not think the public wishes to see a mass withdrawal of service or other sanctions that the OMA may consider imposing.

Unless the public supports the doctors in this vital matter, what will be the results of this legislation down the road? Simply put, in time, piece by piece over the next few years, it will be total, state-controlled medicine. Worldwide experience with such government-controlled health systems, such as in the UK, has shown that state control of finances and allocation of resources ultimately corrupts, efficiencies suffer, and service delivery deteriorates.

I am here because I am worried that the public does not understand the long-term implications. It has been argued that there are no long-term implications. I disagree. I think there is the real possibility that the professional freedom and autonomy of the profession will be legislated out of existence in the not-too-distant future. Speaker after speaker has pleaded for continued negotiation between the medical profession and government. I do, too, but I still see world-apart polarizations of both parties.

People have repeatedly stated that a respected medical profession is needed to provide leadership and input into the real health care issues of today. But as involuntary state employees, can governments serve their professional responsibilities and those of the state medicine policy directors simultaneously? I doubt it.

Being on salary, or working to scale, has been shown to be detrimental to professional incentive. Lost is the special drive, initiative, compassion and energy that makes a good doctor good. Crushed out in the system is physician morale. The dedication and commitment which comprises the work ethic of the independent worker is lost.

Unless this legislation is withdrawn, at least tabled, or radically modified, here are my predictions for what will happen when bureaucrats gain control over the practice of medicine.

Legislation will grant increasing powers to bureaucrats to impose rules and regulations that would otherwise be impossible to enact. There will be increasing bureaucratic establishment of mandatory norms for doctors in hospitals. Doctors with no power to set their own scale of work will regress to the typical state employee mentality characterized by the mediocrity and the all-too familiar commitment, empathy and attitudes of post-office employees.

Doctors will learn to adapt. They will learn to milk the system successfully. They will work off a smaller and smaller base of stable patients. They will work to earn the most for the least amount of work. Multiple practice coverage will increase coverage by only one physician during off hours. Long waits in emergency room departments and in doctors' offices will become the norm.

Under more control and unable to set their own fees, members of the profession will be tempted to increase their incomes by increasing their volume, by seeing more patients, which means less time for each individual patient and, ultimately, more cost to the system.

When the treadmill starts, quality care will be the first thing to disappear. The mindset of the civil servant takes over. It is only human nature and it will happen. Patients will become numbers just waiting in line. In effect, that is the most common criticism now of the system; it will be much worse and more frequent under state medicine.

Once you make a doctor a state employee he will react like one and, when it is all finished, doctors will have learned to regard medicine as just another job. Ultimately, this will encourage more patient abuse of the system, more trivial use of the medical care delivery service, more double doctoring and, horror of horrors, increased cost to the system.

Doctors will respond to the highest fiscal authority and become subservient not to patient needs but to who pays the bill. He who pays the piper plays the tune. The doctor will be under more pressure to allow fiscal concerns to mold medical decisions. There will be increasing development of a health care economic rationale of less is better. The present "do no harm" credo, the Hippocratic oath, will be replaced by a "do not overspend" creed as health-care bureaucrats gain more power and control.

The Ontario Medical Association will be forced to organize itself into a more union-style modus operandi. It has learned. On behalf of its members it will adopt a philosophy of lobbying for decreased hours of work, increased hourly income, improved fringe benefits, pension plans, etc. It will lobby less and less for patient rights. It will argue less and less as patient advocates. It will argue less for the upgrading and replacement of old equipment. It will argue less and less for the institution of new technology and new health programs.

There will be an increasing frequency of the labour relations negotiating tactics of physicians' strikes and withdrawal of services as a bargaining mechanism by the OMA for improved financial benefits to the profession.

There will be increasing regulations à la the Quebec health care delivery system. If you want to see an example of total state-controlled medicine which is chaotic, oppressive and pervasive, you do not have to go as far afield as to England; you only have to look 350 miles down the road.

Capping of physicians' incomes and placement of maximum ceilings for physicians' earning powers obviously will affect availability and quality of work for the physicians. There will be the development of the Quebec-style payment where a physician may be allowed to opt out but the doctor and patient will receive no funding reimbursement from the government plan, despite the fact that Quebec citizen still must face provincial taxes. To me, that is a situation of double penalty for both physicians and patients.

2:40 p.m.

There will be some increase in physician emigration. In Quebec, between 1970 and 1980, some 3,000 physicians, both anglophone and francophone, left the province. Doctors do leave health care systems if they can no longer tolerate them. They leave not only to make more money, but also to reduce their patient load, avoid red tape and get away from government harassment. When doctors leave they take with them not only their expertise and training, but also their assets. In addition, they take their families. All of these are ultimately losses to Canada.

Hospital administrators, fixed by lean and rigid absolute government budgets, will increasingly regard physicians negatively, as nothing but creators of expense who must be brought under direct control, and doctors will be forced into a subservient role in the hospital hierarchy, becoming less important and more alienated in the process.

Eventually, there will be a rationing of health care services based not on a humanitarian rationale but on a fiscal restraint policy. For example, patients older than 65 may be told they are no longer candidates for needed heart surgery. Elderly patients with chronic renal failure may find themselves excluded from the possibility of dialysis or transplant.

I hope senior citizens take particular note of this next comment. Patients with edematous prognosis may be excluded from or threatened with exclusion from investigation and treatment. Financial concerns in medical decision-making will ultimately endanger those least able to defend themselves, the helplessly ill, the elderly and the poor, the very segment of the population that the system is now designed to protect and serve.

History has shown that the government-run system in Britain has reached such an undesirable level that affluent people in unions have bargained successfully for the institution of private insurance schemes. This is a complete reversal of the original stance of support for a national health care program.

In Britain there is an increased waiting time for delivery of medical services. It is a well-known fact that in the United Kingdom it may take days or weeks to see a physician. Elective or even badly needed surgery takes months or years, with patients succumbing before they have a chance to receive the required medical care. In Britain there is also the system of registering patients with doctors by geographic location. The patient can see only the physician allocated to his area. So much for freedom of choice. A patient can no longer choose to see the doctor of his choice.

With fiscal restraints, there is increasing government resistance to the luxury of a second or third medical opinion, to the point where bureaucrats mandate this to be nonessential and nonexistent.

There will be increasing peace-time conscription, whereby governments determine where a new physician can set up his practice. The physician will be directed to work only in government-designated, underserved areas, and if he opts not to work at the allocated location, he will be paid only a percentage of fees generated. It sounds like a simple solution to the staffing of underserved areas, but ask physicians and administrators in Quebec how they can attract new recruits to replace manpower shortages under these draconian regulations. They cannot.

Some will argue, and have argued here I am sure, that the above scenarios are fantasies, figments and phantoms of the doctors' imaginations. After all, at this point the government is not suggesting by this bill that it wishes to take over control of medicine in health care distribution decisions, but is only suggesting the banning of extra billing. I disagree. These are not fantasies. It has happened elsewhere.

Study after study has shown and history has taught us that these predictions are not imaginary. The situations already exist today in other state-controlled health care systems. It is my prediction that we will likely drift along the same path, and these same scenarios will happen in time here in Ontario. Quebec and British Columbia banned extra billing approximately 10 years ago, and restrictive, oppressive control over the medical profession followed. I do not believe the government of Ontario operates on a higher plane of morality or wisdom than the governments of Quebec or British Columbia.

The question, "Do you favour extra billing?" asked by the minister is not so simple. If you ask the citizens of Ontario whether they favour reducing the salary of the Minister of Health (Mr. Elston), then the answer may be yes, but it may not be a wise yes.

Similarly, the implementation of this legislation could have far-reaching ripple effects for Ontario. What citizen of Ontario would like to be treated in the manner I have described by doctors who take into account not only their medical needs, but also the contradictory demands of 99 different government agencies and economists? These agencies' administrators and economists are real and are rapidly gaining power over physicians and their patients. Doctors in this nightmare world will have to respond and obey the highest bureaucratic authority.

For the most part, doctors are proud individuals, up until today. Most of them love the field of medicine. They find the work fascinating. That is often the single most important factor that enables them to survive the work load and the stresses. They expect to be rewarded fairly, materialistically, for their skills. They make their living standing on their own. They are individualistic and independent. Doctors have earned pride in their ability to observe, evaluate, act and, I hope, cure.

If any or all these predictions come to pass, please do not blame the doctors who are now pleading and fighting against the institution of state-controlled medicine. We probably will not have the mental energy, moral stamina or interest to advocate and argue on behalf of our patients.

Ladies and gentlemen of this committee, I thank you very much for your attention. I congratulate you for your interest and involvement in this

important debate. I believe you have the power to make recommendations that will prod, push or force both parties into a reasonable, wise and sane compromise in this legislation.

Mr. Chairman: Thank you, Dr. Homer. Questions? I have one if I might. You have been in OHIP for 20 years and you have never opted out?

Dr. Homer: No, sir.

Mr. Chairman: By your definition, you have been a voluntary civil servant all that time.

Dr. Homer: I do not think so. I do not regard myself as a civil servant. I was not involuntarily conscripted.

Mr. Chairman: Whether it was voluntary or you were conscripted in terms of being a state employee or a civil servant--

Dr. Homer: I remind you, Mr. Johnston, that it is my choice and it has been my choice to operate within the OHIP schedule.

Mr. Chairman: If somebody were to decide in the future to become a doctor and he knew he would be paid through the OHIP schedule, he would have the same freedom you have. I presume you do not think it is just another job at this stage.

Dr. Homer: What was your question? Do I presume?

Mr. Chairman: Do you presume that medicine is just another job?

Dr. Homer: I do not.

Mr. Chairman: I am just saying you have been voluntarily working as a state employee under your definition of what will happen after nobody is allowed to extra bill. You are saying the doctors will all be state employees. You have been a voluntary state employee now for 20 years, and it has not affected your attitude. What makes you think it will affect the attitude of other doctors entering the field when they can still see as many patients as they wish, etc?

Dr. Homer: Because of the predictions I have tried to elaborate on. I do not think governments do this in any sinister or unwise way, but it happens. History has told us that. I worry that this legislation is not going to listen to the lessons of history.

Mr. Chairman: You predict there will be decisions made about rationalizing of services that will be based on other than human need. I presume you agree there is rationalizing of services right now: everybody does not have a computerized axial tomography scanner and a lot of sophisticated equipment is not available in all small hospitals, that type of thing. How do you think those decisions are being made now?

Dr. Homer: Those decisions are made now in co-operative negotiated efforts, not only with the medical profession but also with many other professional health care organizations and associations.

I think an angry, alienated profession in the future may find it increasingly difficult and will be unwilling to supply the advice for the

future health care issues that face us. I am sure a lot of those have been adequately outlined. I did not mention them here, but those concerns are real. The health care delivery system is not perfect now. We do not have unlimited funds and resources. We have to make wise choices. Those problems will be increasingly frequent in the future. I would hate to see an angry, alienated profession not co-operating with government in the future to help address and solve these issues.

Mr. Chairman: Any further questions from committee members? Thank you very much for your time. There will be a transcript of this but we will also have copies of the report as soon as our machine is working. We will label it exhibit 150 at that point.

Our next presenter, Dr. Gervais, has arrived. Welcome, Doctor. I presume this will be an oral presentation?

Dr. Gervais: I decided I would not give a handout. There will not be any questions afterwards unless--

Mr. Chairman: I cannot stop them when they start. Even myself sometimes, as you noticed. Go ahead.

2:50 p.m.

DR. CHARLES GERVAIS

Dr. Gervais: My name is Charles Gervais. I am not affiliated with the OMA, and I only do general practice as a hobby. I have not been in OHIP more than a few years. I am completing a radiology residency, so I am what some of you might consider to be a prototype of the high-tech doctor of the future. I play with the toys you have to pay for. To some extent my interest in technology and my desire to use technology to provide better health care is going to cost you guys a lot of money in the future, as well as the lawyers among us who are going to justify those costs, or sue the pants off us.

I am here addressing you today because I am concerned about the passage of this legislation and what it might mean to the future of health care in Ontario. I am in a profession that will never extra bill. There is no way this legislation will make a nickel's worth of difference to me. I will not reiterate any of the OMA points and I hope not too many of the points made by other speakers that you have been over time and time again.

I would like to touch on issues that relate to the future co-operation between the profession and you as the people who control the purse-strings. You have an awfully tough job. You have to sit there and deal with a profession of individuals who have egos collectively, perhaps, second only to those in politics. It could even be the other way around.

The fact is you have hurt our feelings. You are messing with what we consider to be our sacred trust with the public. The way in which it is being done hurts the feelings of doctors individually, which is unfortunate, but more to my concern at present is the way this bill is being passed. The rhetoric and all the noise being created in the press have done a great deal of damage to the status of the physician in the community. There have been very few attempts by the popular press and no attempts by those supporting this bill to maintain the image of the physician in the community as a caring and interested individual.

The bill is carefully designed to deal with one specific aspect, that

is, billing practices. As much as we as physicians would like to argue about what is going to happen in the future and what may come out of the cupboard, the bill only deals with billing practices. As such, the bottom line is that we are dealing with a bargaining chip, and it is a bargaining chip which, although it may affect the profession as a whole eventually, is only going to affect a very small percentage of the profession financially.

I do not consider the main stumbling block to this bill to be an issue of money or an issue of today. You have confronted a group of physicians in Ontario and are saying to them, "We are going to change the way a small group of you are able to practise." We have said, "No, you are not," being more concerned about what is going to happen in the future than what is going to happen today.

I will not read anything, but there are several points I want to touch on in a disjointed manner. The bill was presented as being in response to a crisis in health care. We should keep in perspective that health care in Ontario--and I went to school in 11 different countries and lived in many different places--health care in Ontario, by anyone's definition, is pretty wonderful. It is good for the patients, for the physicians and for society in general.

As an individual, I resented the thought that suddenly there was a crisis which happened to correspond exactly with this upcoming legislation. I became involved in the first place because somebody asked me, "Why are you physicians going to start charging us more money?" I was the author of a small study made by standing in malls holding pieces of paper, with a little button saying, "Health care poll," and asking the public leading questions. I asked a number of questions concerning health care accessibility.

Among them was, "Are you generally happy with health care?" You may be surprised to hear that 93 per cent said they were. I also asked, "Do you have a problem with access?" and 91 per cent said they did not, which seems to conflict with the government's notion that there is an access problem. Those who did were concerned about getting into hospital beds and about getting surgery done.

It is not too tough for someone to get to see somebody such as me at three in the morning on a Saturday when I am doing the odd evening moonlighting, or to see a doctor at all. It is in other parts of the world, but in Ontario there is not a huge problem with access, except in focal areas and focal aspects of the profession. Neither I nor Joe Homer, nor any doctor I know, supports those kinds of practices. We all agree they should be corrected, as I think the OMA has come around to saying. Whether they need legislation to correct them, you are going to decide at some point.

I am concerned that perhaps there was not a crisis and that perhaps the crisis was created by politicians. You probably realize doctors are more afraid of politicians and lawyers than almost anything in the world. Perhaps this was a public crisis created by the media and the politicians. Forgive me for tarring you all with the same brush, but I guess turnabout is fair play. Perhaps there was not really a big crisis, especially with respect to health care accessibility or with respect to doctors generally.

Let us assume for a moment there is a crisis. Does this bill address a real crisis of accessibility? I genuinely believe it does not and that is why I am here talking to you today. I honestly do not think the bill, which only addresses billing practices of physicians, addresses the crisis with respect to health care accessibility, if there is one.

That crisis relates to my kind of toy, the CAT scanner, the positron emission tomography scanner and nuclear magnetic resonance; it relates to hospital beds and care of the aged; it relates to being unable to get a patient who has heart disease into hospital because there has been someone whom we cannot get into a chronic care facility taking up a bed on the medical ward for a year and six months.

Those are crises, and the concerns that have been raised are genuine with respect to getting to see certain types of specialists and having certain types of services performed without being billed beyond OHIP rates. Those are relatively minor when compared to the genuine crises out there with respect to funding and how the health care dollar is managed. I do not think the bill as it is now presented addresses the major problems in health care accessibility.

Let us assume for a minute that it did and that we have tried to define the high-risk groups: the elderly, those on fixed incomes, people having emergency procedures. These are the people I see when I am out the odd night in the community, being called to see somebody with a broken leg or something like that, having an operation or having a baby delivered and subsequently getting a bill. I would be mad, sure, that I was over a barrel. Those problems should be addressed. Believe it or not, I and almost all the physicians I have spoken to support this government fully in its attempts to correct those problems. We just do not want that kind of solution forced on us.

Whether or not we support the stand of the OMA on specific issues, the profession as a whole supports it in principle, because we have come to realize that the only way we are going to get any respect from you folks is to stand as a group and be more militant. That scares the heck out of me. I do not want to be militant. I do not want to threaten patient care accessibility. I am never going to be able to anyway, but if I were, conceivably I could start to bill \$1 extra for every film I read. No physician wants to put his patients between him and whomever he is arguing with.

3 p.m.

We are all afraid of such situations as what is happening at the Hamilton Psychiatric Hospital. You are as aware as I am that Dr. Deadman and his group have faced a problem that all of us fear, that of someone saying: "That is the way it is. Tough luck. You guys live with that." That scares us. Whether it is all due to finances, I cannot honestly say. From my point of view, it is not going to make a bit of difference to me.

Another thing I wanted to talk about briefly--and I did not want to read anything to you; I hate to see people nodding off as a group--are these fringe groups that have suddenly become involved in the issue. That is a pet peeve of mine. It has offended a lot of physicians to see so-called coalition people supporting the government, or supporting the physicians for that matter, who before this issue came up never had a darn bit of interest in health care and never had anything to say. Now that they have the opportunity to make mileage out of something, to get in the papers and to make a public statement, they suddenly come up with very strong points of view.

I have advocated that a group of physicians should get together and comment that perhaps the teachers' strike should be settled now and that it should be settled by a compulsory rollback. We are all going to come out and say that. Do you know what the teachers' groups are going to say? It is going to be scary what the teachers' groups are going to say.

It is not that they should not be meddling in our affairs; it is just that we are genuinely interested in being givers of health care. We are dedicated to it. Whatever you do to us as a group, I honestly do not think it will change doctors or care givers in Manitoba, where some horrible things have gone on historically with respect to the medical profession, or in British Columbia, where you cannot practise where you want to, and this kind of thing. We do not want to be in that position here in Ontario.

There are other things. It is a waste of time for us as a profession to try to solicit public opinion to change people's minds, to pay a lot of money for ads and to try to convince the public. Frankly, after standing out in the malls for all that time, one thing I was sure of is that the public is reasonably happy with what we do and the care they are getting, except in specific instances. As I said, I think the public does fairly well in Ontario.

I am faced with a bill that in some way or other is going to affect the ego of the profession. It is going to affect the way we feel we will be dealing with government in the future. I am not convinced there is a genuine crisis that requires this bill.

I should be honest with you. Prior to coming here today and realizing that you gentlemen belong to all three parties--I guess there are only three in Ontario, except for the fringe groups. I am not sure you have a mandate to change what the government does, or the power or the influence to make a genuine difference in what the government chooses, because of how it is now committed. I hope you do. By the way, whatever your recommendations, they will go a long way towards restoring my faith in the political process.

The larger picture is that in the long run, we as a profession would like to co-operate with you as holders of the purse in providing the best quality medical care to the people of Ontario. More than anything else, provision of health care in an efficient and cost-effective manner requires genuine co-operation.

The thrust of what I feel is most important is that if we as a profession are to co-operate with you as a government, as opposition and as the third party--as the tail wagging the dog, as some people would say--we really feel you have to have co-operation.

I do not think you are going to get maximum co-operation from a profession that is genuinely offended, not so much by what is being done--because many of us support in some ways the things you are doing, and I hope I have conveyed that--but by the way in which it is being done. It appears that we as a profession are able to make some concessions and to make some changes to remedy the problems you have identified; yet that has prompted no response from you as a government other than to say, "We will give you merit pay." The kinds of things that have been suggested are not realistic. "We will give you the Quebec system." Those of in medicine realize what a nonsolution that would be. That is what it boils down to.

This bill really only nicks us out of a bargaining chip. I do not think that is such a big loss. I am just concerned about the future of health care in Ontario with a profession that is, again, disappointed in the way in which the government has dealt with it. That is all I have to say. I appreciate your listening.

Mr. Chairman: Dr. Gervais, thank you for coming and expressing your opinions. Are there questions by committee members?

Mr. Ward: I have one question. I understand McMaster University is the only teaching hospital in Ontario that requires anybody who is under contract with it to sign a contract agreeing not to extra bill.

Dr. Gervais: Yes.

Mr. Ward: In that regard, the physicians then have a choice of whether they enter into that arrangement. Am I correct that McMaster University does not permit extra billing?

Dr. Gervais: I think it does have such a regulation. Although I am not on staff at McMaster per se, either at the hospital or the medical centre, I know some sort of provision does exist. As far as I know, if they work for the university, they do not have a choice.

Mr. Ward: Do you disagree with that arrangement being put forth at McMaster?

Dr. Gervais: To some extent, I do. I do not believe in a free-market society where you can hold people up to ransom if they are in need of health care. I do not think any nonelective, emergency or obstetric services, such as delivery, where the patient does not have the choice to choose his or her practitioner, should be a lever to gain financial remuneration out of the patient. I do not support that. I never have and I never will.

On the other hand, there are practitioners, such as some of the orthopaedic surgeons I know--take Dr. Richie in Brantford, for instance--who choose that method of practice in their nonemergency and elective patients, where people say: "I would rather see this gentleman than I would somebody else. That is my choice." I genuinely believe they are doing nothing wrong by establishing a contractual relationship with their patients. I disagree if it is an impediment to someone going to that doctor, or if there is ever a case where that doctor will not see someone because they cannot pay extra.

Where I have trouble swallowing the political party line is where someone says there is the possibility of someone being dissuaded or personally feeling that they might not get the care they are entitled to and, therefore, may not seek medical care; these kinds of things. We have taken medicine out of the context of normal society.

When you walk into any contractual relationship in society--with your bank, your lawyer, your podiatrist or anybody else--the parties have to know one another. Those considerations are what I call very airy-fairy or indefinite. I do not think that should be the excuse for taking away the rights of a few individuals to practise and establish a contractual relationship. As you know, it is a decreasing number. You have been through all that.

Mr. Ward: We had the public forums that were ministry-sponsored--not the one that the academy sponsored--we endeavoured to have our initial negotiations and discussions without much success and then we went on the road in an attempt to get some input. If it is an issue of freedom, why did the profession object so strongly to the proposition of either operating fully within the insurance system or fully outside of it?

Dr. Gervais: By fully outside of it, are you referring to the Quebec model now?

Mr. Ward: Yes.

Dr. Gervais: As I am sure the members know, fully outside in Quebec consists of the province telling you that although you pay your health care premiums, if you choose to see a doctor who is outside, you still have to pay his full shot. That is the Quebec system.

Mr. Ward: Quebec does not charge premiums.

3:10 p.m.

Dr. Gervais: If you choose to see a doctor who is outside--Quebec raises its money in a slightly different way than you do with respect to health care insurance.

Mr. Ward: How is that different from a childless family paying a school tax levy?

Dr. Gervais: It is not much different. I simply think that if someone pays an amount into society, he should get the same amount out. If he chooses to work harder and put more of his own income into buying a bigger car, getting a different house or seeing a different physician, he should be entitled to do that without penalty. If the government is generally subsidizing individuals in health care, the people who choose to see a doctor who has opted out should get the same degree of subsidy--no more, no less.

Mr. Ward: Again, we could probably keep going around in circles.

Dr. Gervais: Yes, we could.

Mr. Ward: There are so many instances of things that society funds through property, income and sales taxes or whatever that are not there for everybody to access.

Dr. Gervais: True.

Mr. Ward: There are no user fees attached to them. The benefit to society of the school system is a classic example.

Dr. Gervais: Sure.

Mr. Ward: If it comes down to an issue of freedom, I do not see why that would not be attractive.

Dr. Gervais: It makes no difference to me, yet it makes a big difference to the profession. There is one thing as a group that you gentlemen are failing to see, if you really are failing to see it. It must be difficult for you to understand why somebody such as me, who does not have an axe to grind, does not have a nickel to make one way or the other and has nothing to lose, would, first, come to talk to you; second, write editorials; and third, speak to groups of McMaster medical students, all with the same degree of fervour that you see in the rest of the profession. It must be really difficult for you to understand this.

Mr. Ward: I go out and speak to the same groups with the same fervour.

Dr. Gervais: Yes, but then again you get paid for doing it and I do not. The truth of the matter is that it stems from a genuine concern. I talked to the staff at the Hamilton Spectator because I was concerned. Editorially, the Toronto Star has very strongly supported Bill 94 and has done so unabashedly. I went in to talk to the editorial writers, and they said: "Yes, we sure do. That is our policy. We believe in state medicine and we are supporting it." I spoke to the editor who does most of the writing, and he said, "We strongly support the government." I asked, "Do you think you could give a fair and balanced commentary to society, because I think that is part of your job?" He said, "We do not attempt to on this issue." I spoke to the editor. Please, go to the Toronto Star and speak to the editors involved in writing on this issue.

The Acting Chairman (Mr. Reville): Watch out behind you, doctor.

Dr. Gervais: I was aghast that the genuine response from the gentleman I spoke to was: "We as a paper support the government on this issue. That is why we put out a front-page, 'Woman outraged by' comment." I said to myself: "God, Libya is being bombed. There are all kinds of other things going on today." Here, in the Saturday Star, is an outraged woman, a freelance computer operator or whatever. I think that means she is unemployed at present. If I were unemployed they would say that. The fact is, as a physician I was not that shocked by what was written in the chart. It would have warned me, as another physician seeing this particular patient, not to talk to her about this issue.

On the other hand, the way it was interpreted was the same way that the two elderly people--you remember them. It was another cover story in the Saturday Star showing two elderly people cringing in a dark and dank room, very upset because their optometrist, chiropractor, foot doctor and back doctor were all extra billing them. I thought, "Lord, if this is the way the media is helping the public understand the issue, you cannot compete with that." You cannot compete by buying ads or a few radio commercials.

Mr. Ward: It is not all that bad. The Waterdown Flamorough Review has been straight down the middle--

Dr. Gervais: The Waterdown Flamorough Review has carried large editorials by Chris Ward, MPP. I assure you it does not have the same degree of interest in my editorials.

Mr. Wiseman: Do you know somebody down at the Toronto Star?

The Acting Chairman: Members of the committee, we will perhaps discuss the editorial biases of the press some other day.

Thank you, Dr. Gervais.

Dr. Gervais: Thank you. You guys must have the patience of saints. I have to admire that.

The Acting Chairman: We are all saints, it is true.

The next deputation is composed of Dr. Tom Higgins and Dr. I. W. M. Baxter from the Parry Sound Medical Society.

Hello, Mr. Wiseman, you will want to know that the brief is exhibit 151. Please come and join us. You can see we are all in a jolly mood today. Would you introduce yourselves for the benefit of Hansard?

PARRY SOUND MEDICAL SOCIETY,
DISTRICT 9, ONTARIO MEDICAL ASSOCIATION

Dr. Higgins: I am Tom Higgins and this is Iain Baxter from Parry Sound.

The Acting Chairman: Would you take us through your brief please?

Dr. Baxter: Excuse me for a moment, while I clear my throat. Dr. Higgins and I represent a medical society which services the area of Parry Sound. We consist of 25 or 26 physicians, including about 18 general practitioners and assorted specialists. We have come to you today to talk about Bill 94, the Health Care Accessibility Act, which we feel is very clearly antiphysician and antipatient.

The reasons for stating this are: Once the government controls absolutely what it will pay for each medical act, we feel that as surely as night follows day, it will begin placing further bureaucratic controls on what type of service a patient will have, how each service will be performed and when that service will be rendered. For instance, if and when the patient may have a specialist consultation will be determined by rules and regulations made in the Ministry of Health. These will all be to fulfil the needs of budget constraints and cost control. We are quite sure that quality will inevitably suffer by these measures.

Even at present, before the passage of this bill, there are restraints on the services which may be provided. For instance, a patient may have one complete physical examination in the year. Woe betide anyone who comes 11 months after that physical examination because the doctor cannot give it. If he gives it, he will not be paid by the Ontario health insurance plan.

There are also restrictions on the number of laboratory tests which a physician may order in a given time period. Once a doctor has used up the amount of money he may expend in ordering tests for his patient with a laboratory, a laboratory is no longer paid. We feel these are restrictions on access.

In our opinion, this bill has nothing to do with accessibility to health care, but rather with a method whereby government may more readily control the doctor in meeting the needs of his patient from the health care system. It is the first stage in controlling costs at the doctor/patient level by shackling the doctor.

Access to inpatient hospital care has already been controlled by limiting the number of acute care hospital beds and nursing homes beds, and by severely limiting the number of chronic care beds. In our area, we do not even have any nursing home beds. Rationing in these areas is already in operation.

Cost-cutting is now to be directed towards the physician, by arbitrarily fixing his fees to a predetermined figure, whether he is opted out or opted in to the system. Once government has that bureaucratic control over the physician, it can much more readily apply other constraints to the physician and restrict him in obtaining the best possible care for his patient. As the

sole paying agent, government will be in a monopoly position. The physician will feel he has to be restrained in speaking out for his patient, and will step out of line at his peril. After all, he who pays the piper calls the tune.

3:20 p.m.

This act is a gross intrusion into professional judgement, against civil liberty and against clinical freedom. It has nothing to do with so-called extra billing, or as we prefer to call it, billing the appropriate professional fee.

We feel that access to physicians' services is no problem. Physicians' services are the most accessible kind of services it is possible to have in this province. Doctors traditionally treat patients first and reserve the right and privilege of waiving their fee for patients who are in straitened circumstances; we have always done this. If there have been instances of patients in such circumstances who have been asked to pay more than the OHIP benefit, we are quite sure it has been due to misunderstanding and a breakdown in communication between doctor and patient.

Hippocrates, to whose tenets we physicians all subscribe, said in 420 B.C.: "Sometimes give your services for nothing, calling to mind a previous benefaction or present satisfaction. And if there be an opportunity of serving one who is a stranger in financial straits, give full assistance to all such." The physicians' *raison d'être* is to treat the sick, cure where possible and alleviate suffering always. We have done this in the past, we do it now and will continue to do it in the future, even when we know we will not be reimbursed for our services.

Access to hospital care is another matter. We look at the community hospital where we come from and see the acute care beds full to overflowing, with beds in the corridors and patients waiting in the emergency department for admission, and we wonder how on earth we are going to cope with the summer tourist influx, which will hit us on the May holiday weekend. A third of our acute care beds are filled with patients who should be in a chronic care hospital. Yet we know it will take six to eight months for one of these chronic care beds to become available so we may move those patients. As I said before, we do not even have nursing home beds. This is the kind of access we have to inpatient hospital services.

The high-tech equipment, which we need and our patients deserve, is expensive. It is very difficult to obtain funding for such equipment. Often, we have to raise the funds by public appeal and subscription. Then we find that the operating budget is not available. We call this rationing. Costs are cut by reducing availability of service.

We are further told by the Premier that he intends to extend this by reducing the number of doctors on the basis that the simple arithmetic of dividing total health costs of \$9 billion by the 17,000 physicians shows that each physician costs \$500,000 annually. The logic is deafening. By extension and the same reasoning, our provincial budget could be reduced by \$200 million for each MPP discharged from his riding. However, I intend to fight to keep my member, and I suspect every patient will fight to keep his personal physician.

To give it its due, the government of this province perceives that there is a decline in the quality of health care in Ontario and feels something must be done. Taking aim at the very small number of physicians who bill their

full, proper and professional fee, and in doing so conscripting a noble and honourable profession, is not the way to go.

We have been told so often that this dispute concerns \$50 million being withheld by the federal government from Ontario because of underpayment by OHIP to physicians who are opted out of the system. I do not use the term extra billing, but rather underpayment by OHIP; nor do I accept the figure of \$50 million, which is based on guesswork. No methodology has ever been brought forward to show that this figure in any way approximates the figure that OHIP underpays the opted-out physicians who choose to charge the full professional fee.

Be that as it may, and to try to get things into proportion, \$50 million as a percentage of Ontario's total health care budget of \$9 billion comes to 0.5 per cent of the total. In contrast, the province is subsidizing the tobacco industry by \$800 million. Health care is expensive; we all know how much of the provincial budget goes towards it. The federal government has decreased its contribution towards health care through the established programs funding. This has been decreasing since 1978.

Essentially, funding for our health care system is made up of 80 per cent from general taxation and 20 per cent from OHIP premiums. The government, therefore, finds itself in a bind: Does it increase taxes or premiums, or a bit of both? Perhaps another option would be to allow private money to come into the system. The disadvantaged, those on welfare and the elderly could be exempted and subsidized, as they are at present through the drug benefit program and use of the drug benefit card.

However, private funding has been effectively cut off by the passage of the Canada Health Act, due to the provincial penalties involved, so any contributions made by the receivers of care at the physician/hospital level are effectively negated by reduction of federal government transfers. What kind of federal help is this in the provision of health care? What can increase in the future: Taxes or premiums? Why not allow private insurance? We insure ourselves for health care if we go overseas or to Florida; we buy our Blue Cross. Why, alone in the western world, is it banned by law in Canada?

In the United Kingdom, where I come from, as you may have gathered, essentially all the physicians have had to work within the system. There have been some exceptions. For example, specialists may work one half day a week in private practice. However, the Quebec type of solution is in effect, whereby private patients are not entitled to the benefits of the government insurance system, for which they have paid through their taxes.

Rationing of facilities has become more and more the rule. Waiting lists developed and there were long delays in dealing with many urgent health problems patients had. This was not only to the detriment of the patient but also caused increasing costs to the health care system because of the delays in treatment. The cost of treating such illness was very much more at a later stage of the progress of the disease. Those patients who could afford it sought treatment outside the National Health Service, not being willing to wait 18 months or so for a hernia operation or two years to have a total hip replacement.

I can also interject a small anecdote of my own at this point. My wife had an aunt aged 80 who required a total hip replacement and was told she would have to wait two years to have it done; of course, she chose to have it done privately and it was done three months later. That is the sort of thing

that is happening in the National Health Service and that we see beginning to happen here.

They found they could be treated privately in a monopoly National Health Service hospital, provided they could pay or were enabled to do so by private insurance, which is not allowed in the United Kingdom. It soon became clear there were not enough beds even in the National Health Service hospitals, so private hospitals have begun to be built. The trade unions have increasingly sought private insurance as one of the fringe benefits of their negotiated wage contracts. In fact, private health insurance has become one of the fastest growing industries in the United Kingdom.

I believe we could have private health insurance working well in this province without a two-tier or two-standard system of care. We already have more than one class of patients in our hospitals, according to whether they have insured themselves for semi-private or private bed accommodation. One is not buying or receiving any different medical care, but rather choosing to buy extra amenities. Or is this the next form of hospital extra charging which will be eliminated? Funds from these private payments or private insurance payments could readily be used to buy equipment for the benefit of the hospital population as a whole, and not just for those patients who chose to have insurance.

3:30 p.m.

We feel this act is a direct attack on our professional freedom and will eliminate our civil rights. I say this, believing it most sincerely. It is not blind, unthinking rhetoric. The act outlaws the contract that exists between doctor and patient, effectively forces physicians to work within OHIP and forces all physicians to subsidize the care of their patients by at least 25 per cent of the proper and appropriate professional fee, because of the underpayments OHIP makes.

My professional freedom and the rights and needs of my patients will also be infringed upon because there will be limits on referrals to specialists. We already have rationing in the hospitals, and it will certainly become worse. Doctors have civil rights too, as much as any other minority, whether it be a social or ethnic group. We have the right to freedom from arbitrary price-fixing and involuntary taxation. Slavery is not permitted in Canada, nor should the physician be subjected to civil conscription. I am not in contract with OHIP. My responsibility is to my patient and to him only. We believe this act is contrary to the Charter of Rights and confidently expect it will be struck down in court.

Meanwhile, if this act is to pass, we intend to ignore its provisions. We intend to bill our patients at least a token fee above the OHIP benefit. We in the Parry Sound Medical Society are all opted-in physicians and would have been happy to continue in this situation. To preserve our freedom and liberty, however, we are being forced into acts of civil disobedience because of a perceived need to enslave an independent and honourable profession for political expediency.

We have few ways of protesting an unjust act. When one looks around the medical profession today and sees respected senior members announcing their intention of ignoring this law and a ground swell of support from the profession to join them in doing just that, one has to stand back and take note. A patient chooses a doctor and the doctor administers medical services according to his professional ability and training. It is a simple contract.

No one has the right to another person's work. This we call slavery. Medicare presupposes that everyone has the right to medical care without regard to ability to pay. In fact, insured persons have the right to medical services paid at the level of OHIP benefits; no more and no less.

Citizens who have paid premiums for automobile insurance have a right to payment for the accident damage to their automobiles up to the insured amount, but they must pay the deductible themselves. No law says a repair shop must absorb the deductible, but Bill 94 says a physician must absorb the uninsured part of this fee under penalty of a heavy fine. Not only that, but the patient is invited to spy on and report his doctor if this charge is made. Bill 94 will have the effect of criminalizing the doctors of this province. We resent that and we will fight it. If there is no other way, we intend to ignore the law and take this issue of arbitrary price-fixing, which clearly contravenes the charter, to the highest courts in this land.

The OHIP benefit schedule has been negotiated with the government. Hitherto, 88 per cent of physicians have been prepared to accept that amount of their own free will. The OMA fee schedule, on the other hand, is a guideline only, as stated in its opening paragraph, being neither a maximum nor a minimum. However, when big government comes at us with a sledgehammer and says we must accept the 70 per cent OHIP benefit without any choice as free and independent professionals, we must warn that we will fight and fight very hard. As has already been stated, we feel this is arbitrary price-fixing. Bill 94 is civil conscription of doctors. We will take this to court, among other options we have.

We are bringing this presentation to you today from a medical society in a small community in Ontario. As physicians, our feelings are the same as those of physicians in the large cities and metropolitan areas right across this province, whether they are opted out or opted in. It seems that government, in bringing in this bill, thought the only physicians who would be affected were the small percentage who are opted out, but there has been a ground swell of outcry against this bill from physicians right across the board.

We cannot do our best work under siege. Bill 94 should be withdrawn and a comprehensive review of the health care system of this province should be undertaken. Means of allowing more finances into the system must be found. We believe private insurance must be seriously looked at as a supplementary source of funding.

We respectfully submit this presentation from the Parry Sound Medical Society.

Mr. Chairman: Thank you, Dr. Baxter and Dr. Higgins. Are there questions from committee members?

Mr. Reyecraft: I am not clear about the situation in the Parry Sound area. Are all the doctors in the area opted in?

Dr. Baxter: Yes.

Mr. Chairman: Is there anything further? If not, thank you both very much for coming and expressing your views. One of the reasons there are no questions is that these views have been expressed in the past, as you may have gathered.

Dr. Baxter: We apologize for not bringing you anything new. I intended to preface my remarks with that. I realize you have heard it all before, but we feel that to gain some impact, we have to say these things over and over again.

Mr. Chairman: It is one of the things about democracy. You may hear the same kinds of things several times on both sides or many sides of an issue. We appreciate your taking the time to come.

Our next presenter is Dr. Green, with exhibit number 152. Welcome, Doctor.

DR. GERALD GREEN

Dr. Green: Good afternoon. My name is Gerald Green. I graduated from the University of Toronto medical school in 1971 and did my internship at McMaster University Medical Centre the next year. I have been practising in downtown Toronto as a general practitioner and a physician interested in alternative natural therapies.

Perhaps you would like to take a minute to read my brief, since it is only one page long, and then I can talk about some issues related to it.

Mr. Chairman: I think you should just proceed. Some of us had a chance to run through it a minute or two ago, so take us right through.

Dr. Green: Basically, I think the government is correct in banning extra billing. The government is concerned about a lot of problems in the health care system and extra billing is one of them. The electorate has developed an anger towards medical doctors, maybe not towards their own doctor because people are in many ways dependent on that individual. However, there is a lot of anger towards medical doctors and a lot of it is well-founded.

The banning of extra billing is a correct step and there should be other restrictions and limitations on ordinary medical care. This is the conclusion I came to as I went through medical school. I came to understand what kind of care is being offered to patients and I feel, as do a lot of patients, it is very limited in that it is mostly drug and surgery oriented. I am not trying to say there is no use for drugs and surgery. There is a use for these methods, but this is only a very small percentage of what we should consider health care to be.

3:40 p.m.

Health is a lot more than what drugs you are taking at the moment and the list of operations you have had in your lifetime. These are some of the things I wanted to come to grips with in starting to practise in Toronto in 1972. I wanted to offer patients a wider range of treatments and preventive methods than just drugs and surgery. I became interested in this area, started to read about it, attended conferences and discovered a marvellous area of natural healing which basically uses the patient's own healing process to treat and prevent disease, rather than covering up the symptoms expressed by the disease process.

We all know the body has marvellous healing potential. We see that when we cut our finger. Nobody would credit the Band-Aid with healing that cut. We know white blood cells come out of the bloodstream to remove the debris and other elements come out to heal that cut. It comes from inside. If we, as

physicians, can mobilize that healing process by giving the body what it needs naturally, internally, then we can accelerate that healing process. The area in which I have become involved as a practitioner is using these methods, which are very effective. They may take a longer time to accomplish results than drugs and surgery, which appear to give a result very quickly, but the result is often astounding and long-lasting.

I will use another example in the area of heart disease, which is an unnecessary epidemic in our society. There are so many patients receiving heart medication, anti-angina pills. Part of the anger of patients is coming from the fact that patients are starting to inform themselves about the nature of these drugs, partly thanks to the media, which have covered the medical area quite extensively in the past 20 years or so. Patients are realizing these drugs are not really getting to the cause of their angina or their heart disease. Most of these patients go on to further heart attacks and heart problems.

In a way, the drugs used by cardiologists and general practitioners are deceiving patients into thinking something is being done for their disease process when in fact we are turning off the signals. It is as though a firefighter came in and turned off an alarm without putting out the fire. This is what a lot of us who practise in the area feel is happening with traditional, drug-oriented care. What we try to do instead is to look at the true causes of heart disease.

There is overwhelming medical evidence that factors such as the high cholesterol intake in our diets is a true causative factor of why we have the epidemic of heart disease. There is also much medical evidence showing that, by lowering the cholesterol level in patients, we can not only prevent the epidemic of heart disease, but also treat patients who have heart disease.

We feel that by banning extra billing you are saying to the doctors, "Your methods are limited in scope and other methods should be encouraged." Again, I agree with the government in its stand.

The government's stand with regard to the encouragement of midwives is another step in the right direction because midwives have a lot to offer and are more naturally oriented to the patient's own natural process, rather than putting her in the hospital and treating her as though she has a disease.

This comes to costs as well. The natural methods of therapy that approximately 100 physicians across Canada use are really cost-effective in that we are getting more to the cause of why patients are ill and keeping them out of hospital, away from their doctors, and mobilizing the patient's own responsibility in taking care of his or her own health.

Another important aspect in lowering costs is to show the patient that he has the ultimate responsibility, with the help of advisers and experts such as medical doctors, midwives, nurses and even grandmothers. The government can help with funding, but if we make it known that the patient must take the responsibility for his own health, the costs will be lowered tremendously.

We have run into a few problems with being able to offer patients these services and we know the patients want them. A lot of patients do not realize they are available and there is some restriction on these services. I have mentioned them in the brief.

One is that OHIP funds natural alternative services to a limited degree. Some services they will not pay for; others they limit, for example, the K013 code of nutritional counselling. They say one can do that for only one or two visits per patient, whereas there is no restriction on the number of psychiatric sessions one can have with a patient. We think this is unfair.

There is also a problem with the College of Physicians and Surgeons of Ontario. I do not want to get into a long discussion of that, but suffice it to say that most Ontario physicians who are practising this way have a conflict with the college. We think this is unfortunate and must stop. We will survive because we know how to deal with the college, but we think the results of this are negative towards the patient as well, in that it inhibits other doctors from wanting to offer these services. Young doctors coming out of medical school often call us up and sit in on our practices. They want to learn about these methods, but they are inhibited from wanting to offer them.

Something has to be done with the college, which I think is terribly outdated and biased. The banning of extra billing is a beginning. We can see some of the reactions of the Ontario Medical Association. Its attitude towards this progressive move is one that we see in our practices because it has expressed a similar attitude to those of us who try to innovate and be creative in our approach to health care. I am sure you are aware that similar physicians sit on the OMA as are involved with the college.

We are just getting involved in this area of political involvement. It is not an area in which I have been involved in the past. We do have an association and there are other organizations involved in this area. I am sure some of you have already received letters about natural healing and you will receive others in the future.

It is a key issue. It has a lot to do with the very basis of health care. It is a much broader approach. When they think of health care, too many people think of physicians. Obviously, there are many more aspects of health care and the health legislation review committee has rightly looked into a lot of these areas. It seems Ontario is going to become involved in sanctioning, or at least involved in other ways, with these alternative healing methods.

That is about all I would like to say at this point. Are there any questions?

Mr. Chairman: Thank you, Dr. Green. You say you have an organization or association in Ontario. What is its name?

3:50 p.m.

Dr. Green: It is the Canadian Holistic Medical Association.

Mr. Chairman: I have received information from it in the last little while at my office. Are there questions from committee members?

Mr. Reyecraft: Could we learn a little more about Dr. Green's practice? What is its size? Do patients use you for primary care or are they referred to you by other doctors?

Dr. Green: In my practice and among those of us who practise this way, there are variations. I see people mostly as a specialist interested in natural therapies. I assess their metabolism, chemistry and lifestyle and advise them how they can change their food and exercise programs and the

nutrients they are taking, and about stress reduction, cigarette smoking and a variety of habits we know are prime factors in the treatment and prevention of disease.

I see a relatively small number of patients per day because, to look at all these factors, one has to spend time with patients. My patient load per day would probably be in the neighbourhood of 10 to 15, whereas an average general practitioner might see 30, 40, 50 or more per day.

That is another problem with OHIP. It is geared towards that high-volume practice. When OHIP pays \$13.40 per visit to a GP and he has to pay all his expenses out of that, he almost automatically has to do a high volume or charge the patient in addition to that. We would like to see that changed under OHIP as well. It should not be geared only towards a high-volume practice.

Mr. Reycraft: I have one other question on a different subject. You heard the previous presentation this afternoon. As a physician, do you feel Bill 94 requires you to surrender any civil liberties?

Dr. Green: No, I do not think so at all. Physicians have always enjoyed a tremendous amount of liberty in this society, and I do not think this bill is going to change it at all. Under the proposed legislation, a physician is still free to see as many patients as he wants in a day, so he can maintain his income if he wants. He has the freedom to opt out and deal with patients directly.

There is a problem in that physicians have become so dependent on OHIP that they are afraid of any change. That has been the philosophy of ordinary physicians; they are not the most flexible. They have an advanced case of hardening of the attitudes, to some extent. We find that with the natural therapies. They are not willing to accept the fact that food or vitamins have anything to do with a patient's health or that midwives can help a normal childbirth. This is the kind of inflexibility and attitude I am up against all the time. I see another example of it across the pages of the papers every day over extra billing. I think it is unfounded.

Mr. Chairman: Are there any further questions? If not, thank you very much for coming in to talk to us, Dr. Green. It is a specialty we had not heard.

Our next presenter is Dr. Komer. Members have had distributed all I have received, which is the accreditation of the doctor by the Texas State Board of Medical Examiners.

DR. L. D. KOMER

Dr. Komer: Good afternoon. I am an example of an incredibly flexible doctor, unlike what my previous colleague suggested among the profession. I am an obstetrician and gynaecologist, and we are so flexible we do not know where we are going to be in five minutes. You have to be tremendously flexible to practise this profession.

I have been practising in Burlington for about 10 years and I would like to give you the local perspective. I am chairman of the section of obstetrics and gynaecology for the Ontario Medical Association. You have heard our brief, in which I had a part but did not present. I am past president of the Niagara Society of Obstetrics and Gynaecology. I am on the active consulting staff of

the Joseph Brant Memorial Hospital and the West Lincoln Memorial Hospital in Grimsby. I am also on staff at the Henderson hospital in Hamilton and McMaster University Medical Centre.

I would like to present a perspective on some local things. I know you have heard many of the arguments ad infinitum and I do not plan to go through many of those again. I will talk about accessibility and how I think it will be decreased with this new health act.

I have always been opted out. I plan to stay that way as long as I am in Canada. I hope that will be for the rest of my career, but I have no illusions that will happen. I am not radical in what I am doing. Obstetricians have to be pretty conservative about what we do because we are dealing with a very critical commodity. Unlike many of our colleagues, we do not deal with one life at a time; we deal with two or three; so we are very conservative by nature.

Even though I am opted out, I have not extra billed patients who are on welfare, patients who are over 65 and patients I am seeing for the first time. When I see a patient walking in for the first time--someone who needs surgery or is in a difficult position with a delivery--she does not know me and I consider it bad form to discuss fees. I certainly would not do that either. When patients first see me, I explain to them in writing, and will do it in person, why I am opted out and why I will deal with them. They know what fee they are paying and can judge whether they get fair value for their money.

I have also been through the frustration of dealing with OHIP, because we try to recover the funds for the patients. I write semi-annual letters to OHIP asking why some claims take six, eight or nine months to be paid. This is money out of the patients' pockets. We go after that for them. Every week it is extremely frustrating to deal with OHIP, and I do not propose to try to deal with it myself.

When I came to Burlington 10 years ago, there were five obstetricians. I replaced one who left to go to the United States. The obstetricians did 30 per cent of the deliveries in Burlington and the general practitioners did 70 per cent. Ten years later, this ratio has completely changed for all kinds of reasons, which are probably beyond the scope of this committee. Very few family doctors are doing deliveries, so it has been incumbent upon the specialist to do more and more of them. This is not a role we actively took on, it is one we inherited. At present, if the general practitioners will not do the deliveries, the specialists will.

As an OMA section, we have looked at midwives. We will endorse them to the extent we feel they will be helpful in the system, but I cannot see midwives replacing a lot of the things we do as specialists. We were trained to do difficult deliveries and that is beyond the scope of midwives in any jurisdiction.

We are running into a problem now with a changing legal climate. There are more malpractice suits and fees are going up. Although the standard of care has increased, for social reasons, so has the number of suits. We find some of our colleagues are not practising obstetrics any more. They are becoming gynaecologists instead.

We are facing decreasing manpower to do the 125,000 deliveries in the province every year. I feel we have bailed out the health system by taking on an increasing number. It is not good for my health nor that of my colleagues

to be doing 300, 400 or 500 deliveries per year. It is also not good for family life and private life. As obstetricians, we have taken that on because we are the last defence in this role. I cannot see it continuing. If this health act goes through and there is a big ground swell of resentment among obstetricians, they will say, "We will do our part, but we are not going to take on an increasing role." Many of them will cut back. They have expressed that view to me as president of the section. They bailed out the system when no one else could do it. At present, from all the media attention and everything else, they feel if this act goes through, it is saying, "You guys are not doing a good job, the system is not working and we are going to change things."

4 p.m.

This will decrease accessibility to the system. In Burlington, where five obstetricians and 100 or 150 family doctors do all the deliveries, it is going to make a difference. At present, many of us try to do our own deliveries. If that means being up 17 nights in a row, then you are up 17 nights in a row. You do not cancel your office appointments the next day if you are booked three months ahead; you do your office. There are a lot of stretches when you are up 48 hours in a row. You do your work and go on with it. This is not about to keep happening. We will see technically excellent, unemotional health care. If it turns out that someone is on call on a Friday, he will end up doing all the deliveries for that day, whether it is his patients, the other obstetricians' patients or a family doctor's patients.

You have to realize what a privilege it is to look after pregnant women. This is a time in their lives when they are most vulnerable emotionally. If this health act goes through, it may maintain technically excellent medicine, but it will not address the emotional input the physician has into this sort of health care and that will be a retrogressive step.

To argue about fees is totally irrelevant to this issue. I know very few doctors who have said their fees are not adequate. Very few doctors feel this whole issue is about fees. The fees are a smokescreen and that whole issue should be eliminated. The physicians who are totally interested in the money, and the fees can easily go to the United States. I am solicited every week because of what I do. They are short of infertility specialists in the US, and I get some very generous offers. In 1980, I was offered US \$880,000 a year to go to California. That did not tempt me. The whole issue has nothing to do with fees.

I was born and raised in St. Catharines, went to school in Kingston and practise in Burlington. I do not want to leave this province. This is where my roots are. My family and friends are here. It would be a tragedy if it gets to the stage where I feel I must leave for my profession. However, I do not think I can see my profession compromised to such an extent that I will stay here and practise. If this act goes through, with the steps that will probably follow it down the road, health care and my profession will be sacrificed.

There is already a problem with accessibility--and not because of doctor accessibility--that I see in several areas in which I practise. My main area of interest and expertise is infertility. When I first started there was a two-year waiting list for artificial insemination. Artificial insemination is not one of those glamorous things people talk about. Many doctors do not know about it. It is only glamorous when you need it and you cannot get it. When I came to Burlington, McMaster University Medical Centre asked me if I would

continue to do it, because there was a two-year waiting list, so I continued to do it. I find it incredible that I do it for Brantford and St. Catharines and that people drive in from Peterborough. Why is it not done in other areas?

There is a lack of accessibility because there are no laws governing artificial insemination in the province. I sat on the Ontario Law Reform Commission when it published these two volumes in 1985, but there is still no legislation on artificial insemination. Many doctors are afraid to do it because of the lack of laws outlining liability. It is not readily available. There is very little accessibility. Strangely enough, in 1977 the Anglican Church addressed all the issues, but it took the system eight more years before we recognized it here.

This practice goes on, but it will remain very limited. Patients go to the US or to other jurisdictions to get this because it is not readily available. Right now, there is a critical lack of accessibility in our system to a well-known modality of treatment that works very well.

The West Lincoln Memorial Hospital in Grimsby, with which I am associated, has an excellent full-time obstetrician and gynaecologist. We took a training program together to do very complicated microsurgery on fallopian tubes to restore fertility. He does not have the equipment to do it, so there is a lack of accessibility. He has applied for the equipment. I have offered to help from my hospital and once again there is no equipment. The residents of Grimsby and the area served by West Lincoln Memorial Hospital have a lack of accessibility because of budgetary restraints. Sometimes I wonder whether the system is selectively discriminatory against women or whether it is equally discriminatory against males and females. From my point of view, women suffer unduly from lack of accessibility in the system.

There is a new procedure called pelviscopy that has become available. It was started by a doctor in Germany. I took a course. The technology is now available to do complicated surgery on the pelvis. Through the use of specialized instruments, the normal recovery period of six days has now been reduced to two days. It does not take a Rhodes scholar to understand that if you, your wife or partner had a choice, you would rather have a two-day recovery instead of a six-day recovery from the same surgery; yet funding is not available for these instruments in spite of the fact that we have applied. This will come eventually, but once again the women in the province are suffering through lack of funding because this surgery is not available, even though many of us have had the training to do it.

I am sure you have heard endlessly about the chronic bed shortage situation. In our hospital, gynaecology patients do not end up in the gynaecology ward because there are patients there from internal medicine. The internal medicine patients are not on the internal medicine ward because they have been displaced by chronic patients. Once again, women who need specialized nursing in gynaecology do not necessarily get it. I wonder why that is in this system. They are being discriminated against once again.

Another thing that should be addressed long before the issue of extra billing is what happens with premature babies in this province. One of the most common causes of death in babies is prematurity. There are occasions when we have a very premature baby to deliver, seven, 12 or 15 weeks early, and for reasons not of obstetrics but of care for the baby, we feel the baby must be transferred to a level 3 nursery. We are 10 miles from McMaster. We call and they say, "I am sorry, we do not have a bed."

That is not very good for the patient who is about to deliver this very premature baby. We have even had a situation when not only does McMaster not have beds for these premature babies, but Toronto does not. You get a ridiculous situation where you are phoning around the province, trying to keep someone out of labour, trying to save a life, and there is no accessibility to a bed. This situation should have been looked into long before now and certainly must be looked into soon, perhaps before extra billing.

When I was in medical school, we had a joke that if you gave cars away to our class, half the class would not show up and the other half would argue why they should not take them. We are given instruments to help us on our way in medicine and half the class chose not to take these. Medical students are an extremely conservative group. I have found that my graduated colleagues in the medical profession are even more conservative.

When this whole issue started, I was sceptical that my colleagues would ever come together to form a united group and outline their reasons for being against this legislation. I have been pleasantly surprised. I have never seen our profession so united. The legislation has been so punitive that it has served to set in motion a ground swell of opinion and unite the profession against it. For that I thank you.

The legislation cannot go through the way it is. It is totally unacceptable. It will only damage health care in the province. This is the last weapon we have to fight with as physicians. If we give up the right to extra bill, we have to accept whatever the government gives us. We are no longer naïve enough to think the government has excellent ideas about health care and the direction in which things should go. We are still the experts on health care. We have seen the way health care can go in other jurisdictions such as Saskatchewan and Britain. It is certainly not best for the patient, although in the long run it may be more economical for the government. If we lose the right to extra bill, we are finished as a profession. We will accept what nonmedical people tell us should happen. I hate to give up this right.

I have one last choice, and that is my Texas licence, copies of which I distributed. I obtained that in 1978 or 1979 when 20 per cent of the doctors left Burlington. They were a very conservative group too. When there were problems in medicine, many of our very respected doctors left. Our physicians are a natural resource, and medical care in Burlington suffered after that. We are only now recovering, eight to 10 years later. It is not an idle threat that many of us who have licences will probably go. It may not be immediate, but there will be an erosion of this natural resource. I will be very upset to think I cannot stay in the province if the legislation passes. I will also be afraid of the medical care my family will get, should it go through. I hope to remain living and practising in Ontario.

4:10 p.m.

Mr. Chairman: A lot has been made of the problems of accessibility there are now. There is always a tying-in of the right to extra bill with the doctors' capacity to advocate stopping erosion of the health care system. How is it that we have such inaccessibility at the moment if you have had the unfettered right to advocate so strongly in the past, if those things are connected?

Dr. Komer: I cannot see where not allowing extra billing is going to increase the accessibility of these things. By allowing us to deal with our patients directly, I feel a responsibility to my patients that I will give

them the kind of care they need. I have needed surgery now for a month and a half and I have been booked up three months in advance, but I am not about to say, "I am sorry, I cannot see you," and cancel a week's patient load because if I cancel them they are six months down the road. I will get this done either when I am on my holidays, or if this Health Care Accessibility Act goes through, I may have more free time.

I cannot increase accessibility personally, no matter what you do; it is limited by the amount of my time. However, I am putting in a whole lot more time. It is really not unusual to work 90 or 100 hours a week and be on call for a lot of the rest. We do not get paid for being on call. We also are not obligated to be on call and there are not any laws to make us on call.

I have pregnant patients for whom I am responsible. I am not a family doctor who has 4,000 patients in the practice I look after. If they seek my opinion, I give them an opinion, but most of those patients are not strictly mine. If a patient shows up in the emergency department and has a serious problem and needs surgery, he is not my patient. If I am on call, I will go, but I am only there because, in my judgement, I think it is moral. I will take the call, but there is nothing making me take that call.

To answer your question, because I am opted out, I feel an obligation to the patients and I will work a whole lot more, even though it may not be good for my family's health and my health. If this goes through, a lot of doctors will decrease the number of hours they are available. That is how being opting out allows the system to function at least more effectively.

Mr. Chairman: I would not have gone to an opted-out obstetrician, but when we were having our child, I remember asking a number of obstetricians whether they would guarantee they would be around, and not one of them would. They all made other arrangements on weekends or other times.

Dr. Komer: I always tell my patients that we cannot guarantee that. I cannot guarantee that I will not be hit by a car, be sick or anything else. However, I have delivered 3,000 babies in 10 years and I have missed about 15 deliveries because I was away on vacation a few times. Fifteen out of 3,000 is a better record than I ever figured I could do, but that is just from being available all the time.

Mr. Chairman: That is commendable, I must say. It must be exhausting as well.

Mr. Wiseman: Doctor, you mentioned that for simpler births midwives--I do not think you said "do a good job"--could do an adequate job. Do you have any concerns, as two or three doctors have who talked to me, about difficult births. Who is going to be held responsible and carry the liability insurance if they do not turn that patient over to you till that patient is in a very difficult position?

I ask you this because my daughter-in-law went through this. In this case, it was not a midwife; it was an physician. He held her too long and we nearly lost the mother and baby. They rushed my daughter-in-law to Ottawa where someone--the same as yourself--delivered the baby. For a long time, the head was not properly formed. You hear all about liability insurance. Who is going to be liable? This was a physician looking after her, who perhaps did more or should know more than a midwife.

Dr. Komer: I did some time in England in 1971 and I have learned to respect midwives. Well-trained midwives are excellent at doing deliveries. I feel badly that our present system will only continue while family doctors are willing to do deliveries. Your next speaker is a personal friend of mine and he is the busiest family doctor in Burlington doing deliveries. That sort of thing should be encouraged, but because of lifestyles, difficulties in keeping up with changing trends in obstetrics and because there are more and more changes and more and more liabilities, a lot of family doctors are getting out of it. I do not see any way that the system can cope without midwives.

My section on obstetrics and gynaecology recognizes that. We need to outline the responsibilities and training of the midwives. Excellently trained midwives can function very effectively in the system. If the support of the physician is going to be gained, the training of the midwives and the way they function have to be laid out probably, like the role of an intensive care unit nurse, who is a nurse with very specialized training and very defined duties, and not develop into one of the roles that some of the midwives want, where they do not have to be nurses necessarily and the training is not all that long. That role will not work out.

I can guarantee that the physicians will not take responsibility for problems if midwives in that system come about. There is a committee now looking after it, and if the system is set up and the midwives are highly skilled nurses, I think it will take over much of the role of the family doctor who is looking after normal obstetrics. If that is the case, then I feel confident they would be very happy to turn over complicated deliveries.

Once again, our liability insurance is increasing tremendously. It was \$25 a year when I started, it will be \$8,000 a year next year and it will go up exponentially. If you have the most highly skilled members of the profession giving up obstetrics and not wanting to take responsibility for it--and some of our members do--I wonder who is going to insure the lowest members in the chain who have the least skills. That is a tremendous problem. I do not know why anybody would insure midwives in this province.

Mr. Wiseman: You mentioned that in England you worked quite closely with midwives. How is a layperson to know that a midwife has the ability to diagnose that a certain person, because of whatever problem she might have had, is apt to have a difficult delivery and may need someone like yourself to deliver that child rather than take a chance on everything going normally?

Dr. Komer: Occasionally, things happen very quickly and there is a situation where you can have a very rapid disaster, but usually most of the problems with difficult births occur as part of a long process. Labour should be progressive; a woman should keep dilating and the head should keep descending. If the whole process starts slowing down, you usually get the hint early enough, without problems, that there may be a problem. That is when the skilled midwives in England would call a doctor and say, "We may have a problem with this patient." It is fairly easy to assess ongoing progress and whether it is going normally.

Mr. Wiseman: You would see those midwives doing the work in hospitals rather than at home.

Dr. Komer: Absolutely. You do not have to see very many serious problems and, unfortunately, foetal deaths to see how quickly a so-called normal pregnancy can get into trouble before you realize that there is no place for home births. There were some 1,200 home births in the province last

year; 600 inadvertent and 600 planned. That is really courting disaster. Anybody who spends much time in a delivery room and sees things going bad very quickly realizes that one is very fortunate to be in a hospital with backup help to go ahead and save babies and mothers. To do it at home, I think is going to lead to disaster.

Mr. Wiseman: Thank you, Dr. Komer.

Mr. Chairman: Our last deputant is Dr. Brennan. You already have his presentation, exhibit 154.

DR. MICHAEL J. BRENNAN

Dr. Brennan: Thank you for having me here. Being last of the day is a pretty rough spot to take on the first day of the ball game, especially when you have heard all of this before. Nevertheless, I think it is important that everybody should have his say, so I would like to tell you what I think about Bill 94.

I am a family physician in Burlington. I am opted in. I am on the board of directors of the Ontario Medical Association, past president of the Halton Medical Association, a clinical lecturer at McMaster Medical School and the chief of credentials at Joseph Brant Memorial Hospital in Burlington. Previous to medicine, I was a manager with Bell Canada and even ran for the federal Liberals in 1970. Obviously, I did not win. I have a varied background, I suppose.

I believe personally that Bill 94 is and was initiated by the Canada Health Act and that the Liberal Party with Mme Monique Bégin required something to put forward to the public to be re-elected. The other parties, in their wisdom, agreed and that defused that problem. As we all know, the outcome of the defusal was the passage of the Canada Health Act. You all know it is being debated that it is unconstitutional. I hope we will see some outcome of that this spring.

4:20 p.m.

Because of that, it would seem that another political act happened in Ontario and that is the bill we are debating. Bill 94 came to be or at least it was promised to be. Mr. Rae promised it and then, of course, Mr. Peterson promised it and together they are caught in a political bind, totally up against the wall and having to carry on with this promise to ban extra billing.

Unfortunately, I think the act has been misnamed the Health Care Accessibility Act. We in the OMA, and I personally, cannot see how it connects at all with accessibility. If you want to call it Bill 94, An Act to Ban Extra Billing, that is what it is.

The government is saying the \$50 million that is out there in the federal coffers and that should be in the provincial coffers is one of the reasons for the act, and we need that money. Far be it from me to say \$50 million is not a big, whacking sum of dough, but again you folks know and I know that it is less than one per cent of the total budget. As a percentage it is a very insignificant amount of money. It is an insignificant amount of money for standup fighting, professionally and politically, about this issue.

We do not believe there is a problem of access to physicians. There are going to be examples in any profession, whether it be medicine or law, or

mechanics or politics, where accessibility is a problem because of money, and mistakes happen. In the QMA, we have on record, I believe, four cases dealing with money over the last 10 years that have not been dealt with to the satisfaction of the patient, the profession and the lawyers. We do not believe there is a problem in accessing physicians.

I remember recently a case where a patient of mine over 65 whom I referred to Larry, went there and returned to my office after the consultation a number of weeks later in a furore because she held in her hand a bill. I said, "Did Dr. Komer not tell you that he was opted out?" She said, "Yes, he did, but here is the bill." I said, "Did you read the bill?" She looked at it and said: "There it is. I have to pay and I cannot pay. You doctors say you are not going to extra bill us seniors." On the bill was the amount and below it, "When you receive your OHIP cheque, please come and pay us." The amount billed was the OHIP amount.

That goes on all the time. The 12 per cent of doctors who are opted out, we know are billing maybe half the time and except for Eric's instances are billing people who can pay.

Let me tell you a few little anecdotes of my own. Because it is late, there are a few things in here that I may not read, but nevertheless, here are some problems of accessibility that I see in my practice.

One particular family, both people in their 90s who have been in relatively good health and contributing to society all their lives, have done their share for this province and this community, they have worked all their lives, see me, of course, are not billed and are happy with the service they get. House calls are made when they are required. I do not mind, they do not mind and it is good medicine. I saw a need recently for them to have a geriatric assessment, to have another assessment of their health, to assess their drugs, to have an unbiased view of how these people are doing, and how they are doing socially at home. They were having some problems getting along with each other at this stage of their lives, married for 66 years.

I called the only geriatric assessment team that I could get in touch with, which is at McMaster in Hamilton. They agreed to see this family. This was maybe eight weeks ago. When is the first appointment? August 2. I said, "You have got to have something else; these people may be gone by then." "That is all; we will put them on the waiting list." They are still waiting. They have not got there and the appointment was August 2. That is a problem in accessibility. If you tell me that I do not have the right to charge extra--which I do not do anyway--I do not think they are going to get in there any quicker.

Another lady--and there are hundreds of these cases, of course--of 90 years of age, a patient of mine who was in a senior citizen's home, luckily, had a stroke recently. She was out of the home, into the emergency room, on to the active care medical bed ward, where she is now and has been for the last three months. The home will not take her back and she cannot afford to go to the homes that you pay for, so she lies in the acute care bed, not going to recover and living there.

You know what acute care beds cost. She is occupying one of them; 26 people at this minute at the Joseph Brant Memorial Hospital occupy those beds. Banning extra billing is not going to get her out of that hospital bed, I do not think. Getting the \$50 million back might help for a few minutes, but then it is all over. We think that is the problem with accessibility.

My own father, thank God, has a bit of money. He was in the car business all his life. That is where the money is, I guess. At 83, he recently had a major gastrointestinal bleed, got very good service in Ottawa and survived. Because he had some money, he was able into Central Park Lodge. He is living in relative luxury at \$80 a day. If he did not have the money, there are no beds in the Ottawa region for an 83-year-old, post surgery, to recuperate. There is none. He would stay in hospital for a certain number of days in a \$1,000-a-day private room and then he would be turfed out when well enough to go God knows where. My father, luckily, can pay for it. There are lots of people who cannot.

As for facilities and banning extra billing, we wonder about the facilities even in our own hospital. A number of hospitals in the area, Halton and Hamilton-Wentworth and here in Toronto, have had to hold fund-raising drives so that the public could contribute some money so that equipment could be bought. In Halton, the big argument was about the computerized axial tomography scanner. The argument was back and forth about where the CAT scanner should go, whether it should go to Oakville or to Burlington. The Liberal Minister of Health (Mr. Elston) at that point was given the advice of the district health council that it should go to Burlington. It did not go to Burlington. It went to Oakville; another political move, we think. At any rate, we bought our own CAT scanner so now both places have CAT scanners.

We paid for it. Yet the feeling we have and the feeling that the public has is that the government pays for it; OHIP pays for everything. It does not and it cannot continue to pay. A recent study done by the federal government and presented by Mr. Neilsen indicates that as well. The suggestion in that report is that we better have another look at the Canada Health Act. We cannot go on this way. There is not enough money. Maybe we better have another look at the provinces and how they fund. That is in that report. I do not think anybody has done anything about it yet. It would be a ludicrous thing if, within the next few days or months, they turned the Canada Health Act around and gave us all the money back. Where would Bill 94 stand then? I do not know.

The medical association and doctors in general have no problem with medicare. Tommy Douglas in the past said that everybody should have the right to health care. We agree with that. In Ontario, the doctors started medicare. Physicians' Services Inc. was a doctor-run insurance plan. People were happy with that. The government chose to take that over with the doctors' agreement. At that time, there was a difference of 10 per cent between the doctors' schedule and what the government figured it could pay insurance-wise. A doctor should charge the extra and collect that. That was fine. That was an agreement. We have come absolutely full circle to a situation where, opted in or opted out, we will charge what we are told to charge. We do not think that is very right.

I have a few more little anecdotes and then I will stop. Another patient of mine is a 66-year-old man who came into the office one day very short of breath, saying that he was unable to walk a block. Previous to that he had been relatively healthy. He appeared to me to have definite angina and was in trouble at that moment. We sent him by ambulance, which we got immediately, from the office to the Hamilton General Hospital. He was seen immediately. By the way, these were all opted-in physicians seeing him. He was seen by the cardiologist there, who said immediately that he needed an angiography, which he immediately had. That showed he needed immediate cardiac surgery, which he got the next morning. They did triple-bypass surgery. He is now playing golf and playing tennis and very health and happy.

4:30 p.m.

The last time he was in, we had a long discussion about this whole issue and why this war was happening. I asked him. I said, "What do you think your hospital bed costs per day?" He said: "I have no idea; \$100? \$150?" He was in a private bed at the Hamilton General and the cost to OHIP was approximately \$1,000 a day. He was in there for four weeks. I said: "What do you think the surgery cost? Did you receive a bill?" "I received no bill." "Did you receive a bill from the anaesthetist?" "No bill." "What do you think the surgery cost?" "Triple bypass surgery--\$10,000."

The OHIP fee for a triple bypass is \$1,105 for the surgery. It is a five-hour procedure. I will just let that sit--\$1,105. The Ontario Medical Association fee schedule lists that surgery as \$1,400, a difference of about \$300. A man with loads of money who has spent 40 years with Westinghouse was shocked to believe he could not contribute anything, or did not have to. Money is not the issue, but let us be very honest; \$1,100 for that kind of surgery is a bit ludicrous. You could go to Buffalo and get it for \$8,000.

You know all about the solutions to banning extra billing and getting doctors to be government employees in other countries. You know about the British situation where, if you are over 65 years of age, you do not get dialysis and so on. I will not press on, except to say that in the recent discussions between the OMA and the government, you folks may be as aware as I am about what happened and not all of that has to be discussed here at this table. Our offer is on paper and it seems to be reasonable. I think it takes the real sting out of any extra billing issue that nobody over 65 years of age, nobody in an emergency situation and nobody on assistance would be extra billed.

We can then sit down with government and look at the whole situation in a good atmosphere. That seems to be a reasonable situation to me. It also eliminates about half of the extra billing that exists. The response to that has not been very warm, as you know, and I personally think things are going to get extremely hot. It is a pity this war has begun. Remember that we as a profession did not start the war. We did not come to anybody saying we were all going to opt out and we all needed more money. It went the other way, it seems.

I would like to stop there and ask, even though it is late in the day, that you consider some of these thoughts--and later in the day in total, because I believe tomorrow is your last day of consideration. We will all be watching with bated breath for the outcome and, believe me, our concerns as a profession are just as worthy as yours. We do not want the patients to suffer. We badly want good medical care in this province. Thank you for listening.

The Acting Chairman (Mr. Reville): Thank you, Dr. Brennan. We appreciate the tone of your deputation.

Mr. Reycraft: I have not had time to read through all of your brief. I was following your presentation. Some have suggested to us that if the OMA compromise was accepted, because specific client groups were exempted from extra billing and they were clearly identified, it might lead to an increase in the number of people in the non-exempted group who were--

Dr. Brennan: Who were charged?

Mr. Reycraft: Yes. Whether you agree or disagree with that, if that occurred and the number of people in that group dramatically increased, would you agree that the government would be right to intervene?

Dr. Brennan: That is a two-pronged question. First, I think it would not increase because, as things now stand when extra billing is allowed, it is at 88 per cent, the lowest in history. To say you are going to eliminate extra billing for certain groups and allow it for others may make it an even less palatable act. It does not excite me to go out tomorrow, if that was passed, and start extra billing the people who are left. I personally find it convenient to deal with OHIP. I think my patients like it, and the way things are, I am happy with OHIP payment. I have no great urgency to opt out. It is just that I want the option. I want to have the option to say I disagree.

With respect to the answer to the second part of the question, would the government be right to ban it totally? I do not think so. I do not think the government should have anything to do with banning something like extra billing. If there is a problem with accessibility, I do not think extra billing has been shown to be the cause. It would be the same if you went to the law profession next month and said: "Sorry, guys, whatever your fees are, forget them. We are setting up the fee schedule."

You would not get many lawyers to agree with that. I think there would be a lot of law cases saying it was not constitutional. You would have a riot if you said that to a number of other professions, such as dentists. You did not say it to the chiropractors. You said that accessibility has something to do with extra billing and they are not even mentioned in the act. They charge a good price.

I do not think extra billing is an issue and the government should not interfere.

The Acting Chairman: Thank you very much for coming today.

The committee adjourned at 4:36 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

HEALTH CARE ACCESSIBILITY ACT

TUESDAY, APRIL 15, 1986

Morning Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Jonnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Cooke, D. S. (Windsor-Riverside NDP)

Bernier, L. (Kenora PC)

Davis, W. C. (Scarborough Centre PC)

Jackson, C. (Burlington South PC)

Miller, G. I. (Haldimand-Norfolk L)

Offer, S. (Mississauga North L)

Reycraft, D. R. (Middlesex L)

Stephenson, B. M. (York Mills PC)

Swart, M. L. (Welland-Thorold NDP)

Ward, C. C. (Wentworth North L)

Substitution:

Reville, D. (Riverdale NDP) for Mr. Swart

Clerk: Carrozza, F.

Witnesses:

Individual Presentations:

Mitchell, D.

Roman, B.

Oleksiuk, Dr. S.

From the Ontario Federation of Medical Student Societies:

Preece, M., Spokesman

Individual Presentations:

Keene, Dr. D. L.

Rotenberg, D.

McQuade, Dr. P. J.

Louisy, Dr. S.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, April 15, 1986

The committee met at 10:05 a.m. in room 151.

HEALTH CARE ACCESSIBILITY ACT
(continued)

Consideration of Bill 94, An Act regulating the Amounts that Persons may charge for rendering Services that are Insured Services under the Health Insurance Act.

Mr. Chairman: Our first deputant is here. Mrs. Mitchell, would you like to come forward? The way we operate is for you to make any comments you like, and then I will open it up for a few questions, if there are any.

DEBORAH MITCHELL

Mrs. Mitchell: I am the widow of a doctor who emigrated to Canada in 1966. He first went to Lloydminster, Saskatchewan, which is right on the border. When he arrived all the doctors on the Saskatchewan side of town had moved to the Alberta side of town because of the health service. He was the only doctor on the Saskatchewan side. The hospital was on the Saskatchewan side, so he was the only one who could admit anyone to hospital. We stayed there for only six months before coming to Ontario.

The thing that concerns me most is that once government starts to control anything, especially health services, it tends to get out of hand and people start to abuse it. I am sure the bankruptcy of Britain can be traced back to the instigation of the National Health Service in 1948 when it all started going downhill. There is abuse of the system. When we left Britain in 1966, the bill for sleeping pills alone was about 400 million pounds a year.

I am a registered nurse and I am concerned about what is happening in hospitals, especially the one in Burlington. They eliminated the jobs of three supervisors who had worked for the hospital for 25 years, not because they had reached retirement age, but they just did away with the jobs. Now whichever nurse is in charge on a floor in the evenings or on night shift has to get an extra helper if she needs one, along with all the other duties she has to perform.

I really do not know what else I want to say. Those are the main things that concern me about the whole thing. The wording of the extra billing that the doctors are doing is a misnomer. It is not really extra billing. When the health service first started in Ontario, the government was paying the doctors 90 per cent of the fees laid down by the Ontario Medical Association; now they are paying them only 70 per cent. All they want is 100 per cent of the fee. If I go to have my car repaired and the man says it will be \$100, I do not say, "I will give you \$70." That is exactly what the government is doing to the doctors, "Your fee is \$100; we will give you \$70." I do not think it is right. No one else can do that. If I have to pay for something, I have to pay the full amount, I do not have to pay 70 per cent of the amount.

That is about all I have to say, unless you can think of anything else.

Mr. Chairman: We appreciate your coming to express your opinions to us.

Mr. Jackson: Mrs. Mitchell, we have not had many deputants with any experience with the Saskatchewan system. Unfortunately, we have had few insights into the systems in other provinces. We have had some presentations from Quebec doctors. Can you enlighten us a bit about how the system was operating in Saskatchewan? I know you came from a unique experience, being on the border where the town was divided. I guess doctors were moving from one side of town across to the other side.

Mrs. Mitchell: Saskatchewan was the first province to have a health care service. It started in 1966. When my husband accepted the job, it did not have a health care service. When he arrived in the province, it did have a health care service. All the doctors on the Saskatchewan side had moved to the Alberta side. The clinic he was going to work in was on the Saskatchewan side of town. He had been told there would be five other doctors and there would be this, that and the next thing. When he arrived, he was the only doctor, with a staff of about seven.

The hospital was on the Saskatchewan side of town. Because he was the only doctor practising on the Saskatchewan side of town, he was the only doctor who could admit a patient to the hospital and who could visit a patient in the hospital. He was on call seven days a week, 24 hours a day, for the whole six months we were there.

It was not a big town--it may be a lot bigger now than it was when we were there--but it had a big population on the farms in the surrounding area. There were perhaps about 50,000 or 60,000 people in the surrounding area. The town may have had only about 8,000 people. The doctors had to treat these patients in the surrounding area. This was the main reason my husband left. He was the only doctor practising on the Saskatchewan side and he had to do all the work at the hospital.

Mr. Jackson: Your husband was a practising doctor in England or Scotland?

Mrs. Mitchell: In Scotland for 17 years.

Mr. Jackson: You were a registered nurse. Why did you decide to leave the health system in Scotland? What were some of the reasons?

Mrs. Mitchell: Doctors were not paid a fee for service; they were paid a fee per capita. For every patient they had, they got a certain amount of money per year. My husband was always being fined for overprescribing. In Britain, they have a black book of drugs that doctors cannot prescribe because they are too expensive. If you keep prescribing those drugs, they fine you. You cannot refuse to pay the fine because they take it off your cheque. Every time you are fined, the fine goes up another 50 pounds. The last time he was fined was the last straw. It took him 10 years to decide to emigrate. He hemmed and hawed for 10 years before he finally did it. The last time he was fined for overprescribing was the straw that broke the camel's back.

Mr. Jackson: Is the process of fining the doctors because the government pays the cheque?

Mrs. Mitchell: Yes, it pays for all drugs in Britain. It does not now. You have to pay a certain amount now, but at that time the government paid for all the drugs for everybody.

Mr. Jackson: That would be to pay for the actual cost of the drug. Your husband, as a physician, would have been a dispenser. He would have had to write the prescription.

Mrs. Mitchell: Yes, and the prescription is what the government looked at. The average prescription for the area was \$17. My husband's average prescription was \$37 because he prescribed expensive drugs. Take antibiotics, for instance. Instead of prescribing penicillin or sulphur drugs, which were cheap, he prescribed drugs such as tetracycline. It was much more expensive, but it cured the patient faster and it got the patient back to work sooner. Instead of the patient being on penicillin and off work for six weeks, he was back to work in two or three weeks on the tetracycline.

All they could see, however, was a prescription that cost \$37 or 37 pounds, whatever way you want to look at it, and that was overprescribing. He was prescribing too expensive drugs. There was a committee of about five or six people, none of them a doctor. They would decide: "This doctor is prescribing too expensive drugs. We have to teach him a lesson. We have to fine him." Every time he was fined, it was another 50 pounds. It was up to about 550 pounds when we finally left Britain.

Mr. Jackson: His reaction was that he would rather sustain the fine than give a lesser level of service to his patients?

Mrs. Mitchell: Yes.

Mr. Chairman: Thank you very much, Mrs. Mitchell. We appreciate it.

The next presenter is Ms. Roman. Step forward. It is item 156, which has already been circulated. Welcome.

BRENDA ROMAN

Ms. Roman: Thank you. I want to speak as a patient. I have experienced two different levels of medical care in this city: one level of medical care when I could afford to pay extra and one level of medical care when I could not.

Ten years ago, I was a mother of two small children and was married to a university professor. I had a good standard of living. I could afford the best obstetrical and gynaecological care that Ontario had to offer. I continued to be treated by the gynaecologist-obstetrician who had very skilfully overseen my second high-risk pregnancy and delivery. Dr. James Goodwin practised at Women's College Hospital, which seemed to me a very good hospital. He was opted out of the Ontario health insurance plan.

In 1978, my husband and I separated. In a book called *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America*, Lenore J. Weitzman documents what happens to the standard of living of divorced husbands and wives. She says, "Nationwide, within one year after divorce, the average divorced husband's standard of living increases by 42 per cent, while the wives and children experience a 73 per cent decrease in theirs." My experience, and I expect that of many separated

women with children, is very similar. The drop in my standard of living was precipitous.

I did not go back to see Dr. Goodwin for about four years. When I finally could not put it off any longer and went to see him, he chided me for not coming to see him sooner. I told him that because he was opted out of OHIP, I could not afford it. I was separated now and I had a much lower standard of living. He seemed surprised and asked whether I had had any medical care during that time. I said I had seen my family doctor, but that had not cost me extra. He did not offer to charge me OHIP rates. When I went to his secretary's desk to write out the cheque, the bill he had left was for quite a bit over the amount paid by OHIP.

A year or so later, I again had to see a gynaecologist. I thought of not going back to Dr. Goodwin, but because he knew me and had all my records, I thought it best to make an appointment with him. I called Women's College Hospital where he had his office and was told he had left practice. I asked who had taken over his practice. Apparently, nobody had. I asked what had become of his patient records. They did not know. Either the person I talked to at Women's College Hospital or my family doctor at the time had heard that Dr. Goodwin had gone to Texas.

I asked my family doctor for a new referral. I wanted someone who was affiliated with that hospital. My doctor said there were two new gynaecologists at the hospital and she thought they would both still take patients. I wanted a gynaecologist in OHIP. She said these doctors were opted out. I asked her for the name of someone there who was in OHIP. She said she did not think anyone there was in OHIP.

I was stunned. I did some calling around myself, but I could not find anyone in OHIP, so I went to see Dr. Taylor, to whom my family doctor had referred me. He was not in OHIP. I paid part of my bill, but I still owed him more, which I was not in a position to pay at that time. I got bills every month with two per cent interest per month added to the unpaid balance. I ended up owing him a lot of money, which I feel badly about.

Last November I again needed to see a gynaecologist. I was stuck. I asked about gynaecologists in OHIP affiliated with Women's College Hospital, but again my family doctor did not know of anyone. She referred me to the gynaecology clinic at the hospital.

At the clinic, my medical history was taken by a medical clerk. Then I was examined by a resident. I was told I needed a dilation and curettage. I was alarmed. I had never had a D and C before. I asked who would do it. The resident said, "I will be doing it." We tried to arrange a time before Christmas for it to be done. When that was not possible, the resident said he would be gone after Christmas and a new doctor would do it. I should make an appointment in the clinic after January 1 to arrange for the new doctor to do the D and C.

10:20 a.m.

I chickened out at that point and called Dr. Taylor's secretary to ask how much Dr. Taylor charged for a D and C. She told me. Combined with the money I still owed him, it was too much for me to pay. I made the appointment at the clinic in January and saw the new resident. He scheduled me and performed the D and C. I wanted to know what he had seen but because I was under a general anaesthetic, I could not ask him after the procedure.

I phoned the clinic to make an appointment to talk to the resident about my results. Either the nurse or the appointment clerk there--I did not know to whom I was speaking--said I could make an appointment in the clinic and someone would give me my results. I said I wanted to hear from the doctor who had performed the D and C what he had seen. I was told I could not count on seeing the doctor who had done the D and C. He could be in the operating room or not available on that day. She could not give me an appointment time when I could be sure to speak to him. As it turned out, he was available to give me my results, but I was angry that I did not have the right to make an appointment with the doctor who had done that procedure.

This experience underlines for me what I think of as the two classes of gynaecological care available: the kind you have to pay extra for and the kind you get under OHIP.

In concluding, I have been hearing ads on the radio sponsored by the doctors opposing Bill 94 and asking people to "support your doctor." They talk about the need for more hospital beds. I support that and I support increased funding for operating rooms and hospital equipment. Bill 94 does not prevent that. All Bill 94 does prevent is extra billing. Doctors are out of touch with ordinary people if they think we are going to support them on extra billing.

When poverty is growing and when before payday ordinary people such as myself have-- That is all. Thank you.

Mr. Chairman: Thank you, Ms. Roman, for coming and giving us your personal experiences.

Mr. D. S. Cooke: Can you give us an indication of amount of money we are talking about in your case? Did you leave it out because you did not want to?

Ms. Roman: No. I was trying to remember. I finally owed Dr. Taylor about \$77. I forget how much more the D and C would be, but it seemed that it was going to cost too much.

Mr. D. S. Cooke: When you needed to see the specialist, the fact that there was going to be an extra charge played very heavily on your mind. Did you ever contemplate going in and simply telling the doctor you could not afford it? Was that something you felt you should not have to do and felt embarrassed about having to do?

Ms. Roman: I told Dr. Goodwin I could not afford his services. I understood that the condition of seeing Dr. Taylor was paying his fee. That was my understanding.

Mr. D. S. Cooke: I do not have a lot of other questions. I think your case is a very good example. I appreciate that you have brought it to the committee today.

Mr. Jackson: I too appreciate your sharing with us your concern on this case. You make an interesting statement on page 4. You say, "This experience underlines for me the two classes of care available: the kind you have to pay extra for and the kind you get under OHIP." I sense from your presentation that in your mind there is more than the financial aspect; you felt you did not get the same quality of care under the OHIP system with the explanation of not being able to get the appointment at the clinic and so on.

Ms. Roman: If I had paid a doctor extra, I would have had the right to go and talk to him about the results of the procedure he had done. I was not given that right in this situation. That was alarming to me.

Mr. Jackson: We have had several suggestions about a model for health care which will occur in Ontario after Bill 94 is passed. We may not have the same level of time, attention, consultations and the other things that have been traditional in Ontario because it is a uniform and universal system. I wonder what your thoughts are on that. I have that as a concern. One cannot sit here and not be sensitive to the fact that there are patients who cannot afford to pay extra who are being asked to pay extra. By the same token, at least some of us have a concern that in some way we will not enjoy that same type of relationship or the ability to use the doctors' full time and services when we may feel it necessary.

Ms. Roman: I guess it is a question of who would be using it. Currently, I am not able to use that.

Mr. Jackson: Do you share the concern about the Ontario health insurance plan standard of not knowing who your doctor may be at any given time and not having full access to consultation? Does the lack of consistency give you any cause for concern?

Ms. Roman: I did not understand that there was anything in this bill which would suggest that I would not have a right to go to a doctor of my choosing.

Mr. Jackson: There are sufficient statements on the part of the Premier about major financial changes to health care delivery, whether it be capitation or directing patients to certain doctors, which is going to become the new norm for health care. This bill is enabling legislation giving him more authority in which to do that. Some who wish to look at legislation with respect to how government deals with legislation see this as just the first step of something, instead of being shortsighted. There is a growing concern that this is just the start of a move in that direction. I guess it is another way of saying--

Ms. Roman: I cannot mind read, sir.

Mr. Jackson: --the universal aspect of the program is not all as glorious as some have come forward to present it. Some have been very cautious about suggesting the benefits of a universal program. I sensed from your presentation that you had some concerns.

Ms. Roman: I am not one of them.

Mr. Chairman: I gather from what you are saying is that if everybody was opted in, you would not have the difficulty you have had. Is that essentially what you are saying?

Ms. Roman: That is correct.

Mr. Jackson: What I am saying is that if--

Mr. Chairman: I understood what you were saying, Mr. Jackson. I have heard it many times.

Mr. Davis: I, too, appreciate your brief and the fact that you came before us to share your experience. I think the medical profession and whoever is the government needs to address those concerns.

There seem to be historical precedents when one looks at Quebec and British Columbia specifically. If you want to look at England, you can do the same. The banning of extra billing was the first step towards a more government-controlled health system. In those two provinces, a number of things occurred. I want you to comment if you think that is fair. It is not in the bill, I agree. I can read the bill and I cannot find it. My intuition and what I have heard here in the statements of the Premier have indicated to me that they are the types of things that will come.

I want to know what your feelings would be, as a person who has difficulty with this system now, if the government said, as it did in British Columbia to a young doctor coming out--a man or woman, it does not matter--"You can practise in this province. Your OHIP number is here"--let us say it is Ontario--"You will be able to practise in Wawa." For you, as a patient, the restriction on the number of doctors, by saying to a doctor he cannot not practise in this town but can in that town, limits your access to the best medical care available. How do you feel about those types of--

Ms. Roman: My reply to that is my access is limited by the fact that currently doctors extra bill. I cannot see what would happen in the future if someone were directed to practise in Wawa. It is not in the bill and it is not my experience.

Mr. Davis: That is fine. That helps me.

Mr. Chairman: Are there any other questions? If not, thank you, Ms. Roman, for coming before us. We have had several individuals come from a patient perspective. It has been quite helpful to us.

Ms. Roman: I appreciate the opportunity.

Mr. Chairman: Our next presenter is Dr. Oleksiuk. This is exhibit 157, which has been circulated to the members. This is a pretty substantial piece of work you have given us, Doctor. How do you intend to take us through in the 15 minutes that you have available?

DR. STANLEY OLEKSIUK

10:30 a.m.

Dr. Oleksiuk: Put your roller skates on.

My name is Stanley Oleksiuk. I am an ear, nose and throat specialist. I graduated in 1955 from the University of Ottawa and practise in the city of Windsor as a family practitioner and also as a specialist. I come here today wearing two hats. I wear the hat of a very concerned physician and, second, I wear the hat of a concerned taxpayer.

Briefs by individual practitioners as well as groups and organizations play a very critical role in the work of any committee before final recommendations or laws are passed. It is always imperative properly to identify defects within the proposed legislation under study and then properly to determine the best solutions which will work to achieve the goals for which this committee has been established.

In April 1980, I submitted a written brief to Emmett M. Hall, QC, chairman of the Health Services Review, 1979. Encouraged by the response of his letters, which I have documented, I prepared the enclosed presentation for you.

As an opening comment, to try to make observations on submissions on what has already been presented to this committee would be very difficult, unless we followed each and every one of them. Therefore, I have listed for you five observations which I have made and examples of them. I do not have to emphasize these. They are there. There are groups that are for and there are groups that are against. All groups seem to be stressing that government cost-cutting is interfering with the level of health care in Ontario. The issue at hand is how do we, as a profession that is socially sensitive, initiate a health care system that is both effective and efficient without victimizing the health care profession as well as the citizens of this great province.

As we look on page 4 at the basic guiding principles of medical practitioners, I think it is safe to say they are well delineated here. We want to treat our patients to the best of our medical and surgical skills and do them no harm, to continue our medical education and form a very strong base of knowledge and experience properly to look after our patients, to infuse into the public good living habits and to perpetuate these principles by teaching young, aspiring, medical students. However, it would appear that the current political climate is creating a situation in which the results have been interfering with these precepts.

Historically, the medical profession of today practises medicine built upon the solid foundation laid down by its predecessors. Historically, many fundamental principles were developed which have provided our profession with a very clear sense of direction. Opting out of government health care plans and dealing directly with our patients is one example.

I do not think there is anybody in this learned group who has not heard of Sir William Osler. Sir William was perhaps one of the greatest physicians who has ever lived, a great teacher and a great example of our profession. The following is an excerpt with respect to Sir William Osler taken from Bulletin IX of the International Association of Medical Museums, Memorial Number II:

"He was full of kindness. Whether or not a patient could afford to pay made no difference to him, but he maintained that those who could afford it should pay well for a good medical opinion, not that the doctor should become rich, but because it was desirable that, not having all his time occupied with making a living, he would have more time for the study of his profession."

This he did. He wrote one of the finest books that there is on medical treatment, and it is still a classic.

Professional freedom has always been a cornerstone of the medical profession. Paul Martin, as you all know, was the Minister of National Health and Welfare and was responsible, perhaps more than anyone, for instituting health care in this country of ours. In his book, A Very Public Life, he notes that in 1955, when he addressed a combined group of British and Canadian medical associations in Toronto, this very wonderful city in which we find ourselves, he said:

"The government's objective, I assured the doctors, was a broad health plan that would not undermine the current social structure. We would maintain professional freedom and observe their cherished traditions. Socialized medicine--a pejorative phrase in Canada--would not be forced on the Canadian people."

In the next few pages, I try to deal with opting out at a personal level because, after a number of years as an opted-in physician, having started in practice in 1960 in Windsor, I opted out in 1974. I list the reasons for it. The reasons are there and you can read them. I think it is important to realize that opting out is a very personal decision. It is one that no physician makes because he is there for simple greed, as some people have said. It is not the reason at all.

I state that I have been opted out for 11 or 12 years now and I have uncollected accounts, which I have listed, which are less than two per cent, so I do not think I am denying anybody access to health care.

On page 8, I list a couple of examples of discussions I had with people when I first opted out. When I told a lady I would be charging her over and above the OHIP schedule of fees, she thought I was going to charge her about \$300 for this. When I told her that all OHIP paid was \$50, and that once it made all kinds of deductions I ended up getting paid \$25 for the procedure, she could not believe it.

Another time when I was doing a very delicate ear operation on a woman--and she had already had it done in Detroit--I told her I would be charging \$300. She could not believe it. She said, "I paid more than that five years ago." She asked, "Can I give you \$300 now before you operate because you will charge me more now that you know how much I paid?"

The point I am trying to make is that very few people really know what a physician is paid on an individual basis for his services. Doctors work long hours and they enjoy good incomes, but they work long and hard and they are responsible. All that people want to press is the final total figure. No one looks at the end result.

The fees of an opted-out physician are not exorbitant. They are not only reasonable, but also fair. In my own practice, I know of no one who has ever been denied medical services because he could not afford to pay.

Page 9 is in response to some of the criticism that has been leveled against extra billing. They have said there is a two-tiered system: one for the rich and one for the poor. I think this is a terrible thing to say to physicians. Physicians do not practise two levels of medicine. They do not turn it off and on. We try to practise and render services to the best of our skills.

Someone has said--as well as the Premier--that we have too many physicians. Have you been to a doctor's office lately and been seen immediately or obtained an appointment immediately?

Just suppose for one minute that all the doctors who have practised medicine for 30 years or more in our county retired. What would really happen? I went over the members who are listed in our county medical society. We have 255 members. I went on the basis of their year of graduation, adding one year for family practitioners and five years for specialists. I found that 48

family physicians should retire and 28 specialists should retire. That is 76 members out of a total of 255. If those gentlemen retired just as it is the privilege of other members in government and in industry to retire, my God, we would have a decrease of 22 per cent in the number of people who are in our locality. This would be a chaotic mess. Then you would see the people complain.

The government would have the public believe there are too many hospital beds and, in the past, has closed hospital beds. How long have you or your family waited lately to be admitted to hospital? I hope none of you has to go.

Let us go to page 10, regarding health costs and accessibility, if we are really concerned about accessibility and health costs and force physicians to all opt in. The Toronto Star on January 4 provided some figures, which I list in table 1. Everything to your left was listed in the Toronto Star, the number of services rendered. On the right-hand side is an interpolation of this. You will see that in 1984 only 5.24 per cent of the total services of this province was rendered by opted-out physicians and almost 95 per cent was given by opted-in physicians.

You can see the number of physicians by the number of doctors. There are 1,813 for the opted-out physicians and 4,460 by the opted-in physicians. If you go to 1985 and take the eight-month figure and interpolate it for 12 months, you see that the opted-in physicians have rendered fewer services per physician and the opted-out physicians have rendered more services. If we get everybody forced in, it will be worse. It will be a calamity. Where is this so-called access?

We talk about the government holding back \$50 million. It is holding back \$50 million for 3.7 million services, \$14 a service. Is this an excessive amount?

10:40 a.m.

Let us become a little bit more personal, on my own behalf, about when I opted out. I looked to see what actually happened when I opted out. I took several months and I saw that when I was opted in, I rendered 514 consultations for the months of April 1974 and April 1975, and May 1974 and May 1975. I am trained as an ear, nose and throat surgeon. Out of 514 consultations, I did 93 surgical procedures. When I opted out, I did fewer consultations, 298, but I did more than twice as many surgical procedures. The people who really need to be seen have to have access and it is easier to see an opted-in physician. A lot of people go to see doctors needlessly. They do not have to see them. Actually, by opening up everything, in a sense, you discourage and decrease accessibility.

The real problems with health care are many. Even the recent release by the Ontario Hospital Association, on page 10 of the January 4 issue of the Toronto Star, dealt with a few of these. Of the problems facing health care today, opting out was not even listed. It was one of the lesser ones.

What are the real problems with health care in Ontario today? As a physician who has practised in this province for 31 years, I think I can say something about this. I will list them very quickly. One of the things that is very important is the method in which we are selecting students to study medicine. Orland French in the Globe and Mail on January 13 or 14, dealt with this. We have a great number of underserved areas in this province.

The nursing profession: There has been an improper utilization of nurses in the health care system. Properly trained nurses must take their place in the field of primary care by assisting and working closer with patients and their physicians. Their services must also be expanded into the fields of anaesthesiology and midwifery. I believe we have to have nurses participating more in health care and I support this strongly.

Hospitals: The hospital bed ratio has decreased. When I first started in practice it was five beds per 1,000 of population. Now it is down to 3.5 beds. We are losing more beds. More beds are needed. We have patients who abuse the health care system by going to emergency rooms and using them as convenient centres, just walking in. In hospitals in the city of Windsor, we have 1,300 beds and not a single intern. We once had five or six interns in every hospital. The government is not funding resident intern programs. We need to get the young doctors into nonuniversity hospitals.

I deal with physicians who are having a difficult problem keeping up with medicine; they need help. I believe young physicians who have finished their medical training need to return something to the province.

I deal with patients. Patients' lifestyles have become abusive. They destroy their general health and then they run to the medical profession and want an instant cure. There is supposed to be a pill for every ill.

We as physicians and the nursing profession have to become more actively involved in preventive health care and health education.

Payment of physicians: There is no other profession or trade where the new entrant or graduate into the system is paid the same amount as an individual who has been actively involved in the health care system for 20 to 30 years. This is a great travesty and must be changed.

Funding of health care: At the present time, health care is not being funded properly. It is underfunded.

Funding of continuing medical education: We have to have more funds available to physicians to keep up with medical care.

The increasing cost of malpractice to physicians is unbelievable. It has multiplied. When I started out in practice, we paid \$50 a year for malpractice insurance. Now we can go as high as \$6,000 a year. God forbid it should go as it has in the US where a colleague of mine doing the same specialty I am doing spends \$40,000 a year. In New York it is \$100,000 a year. Where are we headed?

Let us deal with the real problems in health care, the problems of communication between the proprietors of health care and the Ontario Ministry of Health ministry. We have to improve communications between government and the physicians.

Accountability of the individual: I had a patient who saw six doctors in one day. She ran around and played a game. She wanted to see doctors, hold their hands or have them hold her hand. There have to be ways to improve the accountability, not only of physicians but of patients, in the utilization of the health care system. In essence, health care must be efficient. It must be caring. It must show cost containment. Of all things, it must not be abused.

Freedom of choice: We live in a very wonderful country, and it is all based on the freedom of choice. No one tells us what we have to do in terms of what we want to do in our lifestyle. Why should anyone have the power to criticize or unilaterally tell anyone else how he or she should negotiate proper remuneration for services they render? We are all educated at public cost, each and every one of us, and a good number of us work in publicly supported institutions.

Lawyers and judges use the public courts. Nurses, paramedical personnel and medical personnel use hospitals. More than 100,000 teachers in this province use the school system. Why should anyone isolate and be vindictive towards physicians? Why should they criticize physicians because they use hospitals? A great majority of physicians do not use hospitals at all. I use the hospital one day a week. I am permitted to operate on one day. When I first started, I used to operate four days a week. Now it is one day, if I am lucky.

Therefore, we must look at all the health care problems in this province. Health care in Ontario is neither underfunded nor overfunded; it is overutilized. In many instances, it is overutilized by patients who run to physicians unnecessarily. In some cases, it is overutilized by physicians who practise within the system. They are afraid of being sued, so they order every test imaginable or order consultations galore. The practice of medicine is becoming a defensive act. It no longer is, "What more can I do to help my patient," but, "How can I, as a physician, protect myself from my patient suing me?"

We all have the right to choose our professions. We have a right to live and practise in any community of our choice, and I hope we have an opportunity voluntarily to select how we as physicians will be properly compensated and will deal with our patients.

I stress that it is very important for the medical profession and the Ministry of Health to discuss problems of health care. It must not be an adversarial relationship. The Ministry of Health cannot be dictatorial and the medical profession cannot stand aloof. I am glad they are getting together. What they are doing, I do not know. One of these days we will get the magic word, and God knows what it will be. God help us all. There must be a meeting.

In the words of Paul Martin, who paraphrased Archbishop Makarios in 1965: "It takes two sides to make an agreement. Compromise cannot be unilateral."

When we turn to page 16, I believe I am safe in saying what we really want to have in this province. First, we want to have proper physical facilities. We want the latest state-of-the-art investigational instrumentation and treatment modalities. We want well-motivated health care professionals, medical doctors, registered nurses, other paramedical personnel, all concerned with preventive and total continuing health care management.

All of us should be properly compensated as health care providers. There must be encouragement for continuing medical education at all levels and adequate funding for research and basic medicine as well as clinical medicine. Medical care planning should be co-ordinated by continual input from the medical profession and a provincial health ministry. We must also have a cost-effective health care plan at all levels.

Since the government unilaterally forced health care insurance on the medical profession and the people of Canada, there has not been a totally agreed-upon working plan. Consideration should be given to the following proposal as a workable total health care delivery plan for Ontario.

Ontario citizens, as well as the medical profession, are totally frustrated by the lack of direction by government to provide a properly funded health care plan that should encourage Canadian physicians to participate voluntarily as opted-in physicians. The right to opt in or out of OHIP should be a right guaranteed by the Canadian Charter of Rights. However, the following presentation is made to encourage physicians voluntarily to opt in to OHIP, and I stress the word "voluntary."

I am not a person who likes to complain. I am sick and tired of complaining, but I want to be constructive. With this as a guiding principle, let us look at pages 19 to 21, which are presented to encourage physicians voluntarily to opt in to OHIP. It is important. We can look at it in terms of an advertisement to encourage people to come in. Let us get people into the system. We have to have the primary care physicians who are properly licensed, and we should encourage them to be certified with the College of Family Physicians. All our medical and surgical specialists should possess a fellowship.

I said earlier that we and the young physicians coming in should return something to the province. I suggest that we must have fulfilled the following requirements: We must have completed a full rotating internship in a nonuniversity hospital and we must have spent a year in family practice. Once we have done this, an individual should be able to go out into practice and practise anywhere he wants in Ontario. He should be able to become a member of any hospital in Ontario. If I was an ear, nose and throat specialist who wanted to come to Toronto and open up an office, I should have access to the hospitals in this community. I should not be denied that access, and I do not want to see a young physician denied. We are talking now about closing hospitals. We are training people and saying "Let us close hospitals and not let people in." We cannot do that. We have to give them that opportunity.

I would like to see that we encourage young people to come into group practices so two or three people get together and voluntarily form what I call a primary health centre. I would like to see that funds are available so we can bring together certain instrumentations of a nature to facilitate communications. Nurse practitioners should be a part of this system so that they work very closely with the physicians.

10:50 a.m.

As far as remuneration is concerned, I think remuneration can be based on a fee for service or be negotiable on the basis of global budgets or salaries. If the physician wants to become a salaried physician, let him become a salaried physician. If I have, as I have, a group of five ear, nose and throat specialists and I want to get a global budget to render services in our community, I should be able to have that; or, if I want to stay out and be an independent physician, I should have that right. Let us not deny people the right of choice. Nobody denies anybody what he should do. It should never be permitted.

The initial starting fees will be the present existing provincial fee schedule of benefits. I think it is important that increments should be made. I say three per cent per year for each active clinical practice in Canada by

the family physician or the specialist, up to the suggested existing medical provincial fee schedule, the OMA fee schedule here in Ontario.

We talk about excellence, rewarding excellence and responsibility. I think there should be increments given to people who are heads of departments, chiefs of staff, certain qualified specialists with a special premium for tertiary consultation and surgery. We have to recognize this. We have to give this.

We should be able to continue our medical education. It should be properly funded and fully taxable. Physicians should be encouraged to take time off--universities are funded so a guy can take a year off every seven years and he gets paid while he is away--and on full retirement planning. Future career opportunities in a system such as this are unlimited.

I want to talk about health care planning. Long-term and short-term health care planning will be a fully integrated system in which continuing policy will be made on the basis of participation by physicians' associations with the provincial health ministry. This should be a regular thing.

I then talk about methods as being cost-effective. The Health Care Accessibility Act, as I see it--I have a copy of it here--stipulates that "the bill also provides that the Minister of Health may enter an agreement with associations representing physicians, dentists and optometrists to provide methods of negotiating and determining the amount payable under the plan." On page 23A I make a recommendation to the standing committee on social development as follows:

"Believing firmly that the standing committee on social development," which I sit before today, "and the honourable gentlemen and ladies of the present Parliament of the province of Ontario are truly interested in responsible access to health care and are concerned about the quality of health care, not the quantity of health care"--let us not just open up and everybody run in, but truly the "quality of health care." This is what we are talking about.

"Having proposed a plan in which physicians of this province would voluntarily opt in to the Ontario health insurance plan: The following proposal should be added to Bill 94, the Health Accessibility Act 1984, before the bills comes to its third reading:

"Under section 3, I propose that you add section 4 to encourage all properly licensed physicians in Ontario to voluntarily submit their accounts directly to the plan under section 21 or 22 of the Health Insurance Act. The Lieutenant Governor in Council and the Minister of Health will enter into agreement with the individual physicians of the province of Ontario a proposed plan of health care delivery as presented on pages 19 to 22 herein called the 'Total Ontario Health Insurance Plan of the Future'."

An efficient health care system can only operate in this country when full operational control is returned to the medical profession in close working liaison with provincial and federal governments, which are currently the prime financial suppliers of the health care dollar. It must be realized by all that a health care service is only as good as the health care providers who render the service. We cannot drive away the good physicians and we will drive them away if we pass this law as it is.

In conclusion, it is only fair to state that there is a dual

responsibility and obligation on the part of the provincial government and the medical profession in Ontario to ensure that the people of this province receive the finest available medical care. The time has come to cease all irresponsible, vindictive rhetoric from all sides.

I have laid down guidelines here. I say that we should have suggestions in discussing this with the other groups. Once this has been all initiated we, the physicians of Ontario, can go about the work we are so properly trained to do.

All of the preceding is respectfully submitted. I trust that this initiative will assist in achieving the goals of the present Ontario government and the medical profession in establishing a responsible plan in which future generations of young Ontarians will aspire to participate.

I thank you. Did I do it in 15 minutes?

The Acting Chairman (Mr. Reville):: Not quite, but you gave it an awfully good try. Thank you very much, doctor.

Mr. Bernier: I am sorry I came in late but I want to thank the doctor for his presentation.

Doctor, you made reference to your malpractice insurance premiums. When you first started your practice it was \$50?

Dr. Oleksiuk: It was \$50 in 1960.

Mr. Bernier: Now it is up to \$6,000?

Dr. Oleksiuk: It varies with the different specialty. Obstetrics, gynaecology and neurosurgery pay the highest amounts.

Mr. Bernier: What do you pay now?

Dr. Oleksiuk: I pay \$1,900.

Mr. Bernier: You are paying \$1,900. Is that for exactly the same coverage?

Dr. Oleksiuk: There is no coverage. All it means is that you are protected by the Canadian Medical Protective Association. It is a group thing, and everybody pays into it. Our Canadian Medical Protective Association then takes every case through the court system.

Mr. Bernier: There is no limit on the liability.

Dr. Oleksiuk: No, there is no dollar liability.

Mr. Bernier: It is basically the same coverage.

Dr. Oleksiuk: Yes. It is all based on your chances of being sued in different practices.

Mr. D. S. Cooke: I am sure Paul Martin will be happy with your rewriting of the history of health insurance in Canada. In your brief, you refer to a case of one individual who went to six different doctors in one day. How would you prevent that?

Dr. Oleksiuk: If the patient had to pay up front, he sure as hell would not do it.

Mr. D. S. Cooke: However, the proposals the Ontario Medical Association and other groups have put forward have been that low-income folks and the elderly would not have to pay anything extra. Of course, for MPPs and anyone who has a decent income, it would not really matter. How would these deterrent fees act as a deterrent? Unless you had deterrent fees of more than \$100 for high-income people, and unless you charged low-income folks--are you suggesting that low-income people and seniors should have to pay a deterrent fee?

Dr. Oleksiuk: No, I am not suggesting that. I have been opted out of the Ontario health insurance plan for 12 years and I do not bill anyone who is a senior citizen or on any government system. This whole problem of deterrent fees is a question mark. It is very difficult to answer.

Mr. D. S. Cooke: However, that is what you are suggesting.

Dr. Oleksiuk: I am losing you in some way; I am sorry.

Mr. D. S. Cooke: I asked you how we would stop someone from using six doctors in one day.

Dr. Oleksiuk: Do you mean if we had a completely opted-in plan?

Mr. D. S. Cooke: Under any plan. I am just asking what your proposal is to stop double-doctoring.

Dr. Oleksiuk: I do not know how you could do it. I think it is the character of the individual to want to go around and see doctors. I suppose you could not stop anybody. Even if they paid me, they would still do it. I do not know.

Mr. D. S. Cooke: I have one other question. In the latter part of your brief, you said full operational control should be given back to the providers.

Dr. Oleksiuk: I think health care is a medical thing. Doctors should be the ones who are involved in laying out the ground rules, the framework, not a nonmedical person telling a medical person how to practice medicine.

Before government came into all this, we did not really have problems in health care. We rendered service, we looked after people. When I went into practice in 1960, I would say 20 per cent of my time was spent looking after welfare people. I was not paid for a lot of those people, but we looked after them.

Mr. D. S. Cooke: Coming from Windsor, suggesting that full operational control should be given back to the providers and that government intervention causes problems, with all of the province trying to get hospitals to work with one another, there would be controversy between trying to get this new chronic care hospital built where the major problem is not the government in this case. The major problem is the providers; the competition between hospitals and other health care providers. I really do not know how turning total control back to those people would solve the problems. I think it would create even more.

Dr. Oleksiuk: As for the chronic care facility in Windsor, I would be willing to discuss that with you at any time.

The Acting Chairman: I think it would be great if you discussed it with him after this is over.

Mr. G. I. Miller: The percentage of doctors who have opted out has gone down since the fee schedule has been increased. What would it take to have you opt in? Is there some agreement that could be made so you would be rewarded fairly?

11 a.m.

Dr. Oleksiuk: I have laid it out in this program. If a physician has gained more knowledge, more experience and more responsibility as he has been practising, you should recognize that. Right now there is disparity between the Ontario Medical Association fee schedule, which is listed as 100 per cent, and the Ontario schedule benefits, which are around 70 to 75 per cent. We could start by saying that the longer you are within the system, we will increase that by two per cent or three per cent or whatever it is, so eventually the gap will be narrowed and the physician will be given some recognition.

We also have to recognize there are some very highly skilled physicians and surgeons who add a little something more. I mention it in there as a tertiary level. If I see a patient who has a certain entity and I can look after him, that is fine. I may say: "This case is much more involved. It requires a team to do this operation." It may be a carcinoma of the larynx, which is a bigger procedure. I say: "Let us refer this case to the University of Western Ontario. There is a young doctor there who is well trained and has had more experience. Let us send that case to him." He should have a different level of payment for that.

Mr. G. I. Miller: Can that not be done under Bill 94?

Dr. Oleksiuk: Bill 94 says nothing. All it says is that you cannot bill over and above the schedule of benefits.

Mr. G. I. Miller: I think those fees are negotiable.

Dr. Oleksiuk: There is nothing that says any fees--well, there is. However, in the pages that I have left out, I make proposals to narrow that gap and encourage physicians to opt in to the plan voluntarily.

Mr. G. I. Miller: You indicated in your brief that everybody does not have access to the operating facilities of the hospital.

Dr. Oleksiuk: You have access, but it is restricted. I can operate one day per week. If I want to operate on another day, it is always a problem because there are not enough operating rooms or anaesthesiologists. Most of the work is elective, so you might book one, two or three months in advance in certain specialties. If it is an emergency case, you get access, but you might have to wait a couple of hours or have to bump somebody who has to wait until the emergency case is done. There is not open access.

Mr. G. I. Miller: Should that be reviewed?

Dr. Oleksiuk: Yes. I did my surgery in 1960 as an ear, nose and

throat specialist. When I first started to practise medicine in Windsor, I could operate two or three days a week if I wanted. Now, I have only one day.

Mr. Offer: With respect to all doctors becoming part of the plan, your response was that it should go more toward the schedule of the Ontario Medical Association. I am trying to get a handle on what you are saying. If the OMA schedule was the schedule of payment, all doctors would abide by that.

Dr. Oleksiuk: I cannot speak for all doctors.

Mr. Offer: You suggest that.

Dr. Oleksiuk: I am suggesting that physicians' services should be recognized in such a way that there would be an increasing scale of benefits paid. As it narrowed between what the benefits are and what the full OMA fee schedule is, I hope the physicians would voluntarily opt in to the plan.

Mr. Offer: What if there were doctors who wished to go above the OMA schedule?

Dr. Oleksiuk: This is a free country. If that is the way they want to practise and they have an agreement with the patient, if the patient knows, as in my office--all the patients who come to my office are informed that I am opted out. I tell them my fees. I say: "If there is any problem, let me know. If there is a problem, forget about it." They have to be given that option. Fewer than two per cent of my patients, during the years I have been in practice--

Mr. Offer: I was merely asking for a clarification because it seemed, with respect to your proposal, which is extremely exhaustive, you were leading to the fact that if the OMA schedule were that which is now the OHIP schedule, there would not be any opting out or whatever you wish to call it. because everyone would abide by the OMA schedule.

Dr. Oleksiuk: I hope that would be true.

Mr. Offer: If that were the case, what about doctors who wish to go above the OMA schedule?

Dr. Oleksiuk: That would be a personal decision of the physician and a personal decision of the patient.

Mr. Offer: Do you not think there would be any problem with respect to that?

Dr. Oleksiuk: I think it would not be a major problem. You have 88 per cent of the physicians opted in already.

Mr. Offer: Thank you, I wanted to get some clarification on that.

The Acting Chairman: You obviously have put a lot of thought into your brief, Dr. Oleksiuk. Thank you for coming.

The next deputant is Mark Preece who is representing the Ontario Federation of Medical Student Societies. The brief is 158.

Mr. Preece: Thank you very much, Mr. Chairman. Perhaps I should preface my remarks with the fact that I was only told about this presentation yesterday p.m. and I had to make a hurried statement. You will have to excuse any typographical errors. I particularly notice one on the first page. We hope it will be picked up.

The Acting Chairman: We would be pleased if you do not worry about the typos. Give us your views.

Mr. Preece: Okay, thanks. Allow me to introduce myself. My name is Mark Preece and I am a third-year medical student at the University of Toronto. As the spokesman for the Ontario Federation of Medical Student Societies, I have been given a mandate to present to this committee the feelings of the medical students across the province.

There are approximately 2,200 students in this province. As their representative, I must tell this committee that we are opposed to Bill 94. We are not the Ontario Medical Association, but I do not think the government accord should downplay our organization as we represent the doctors of the future. It will be individuals at my level who will be the Scullys, Morans and Myerases of the 21st century. This government, as well as future governments, had better realize that the solid unification in the ranks of the Ontario Medical Association is not going to weaken as the profession is replenished from below by students.

I am not here to give reams of facts and figures, just a few basic ones. However, I would like to present some concepts and principles concerning the bill, and to comment on the manner in which it is being railroaded through the Legislature.

The OFMSS is gravely concerned. The trends of the governments in this country are drifting closer and closer to socialized medicine. In fact, the party leader of the chairman of this committee has clearly stated that the ultimate goal of the New Democratic Party is socialized medicine.

This brings us to a key point. If the governments of this land eventually gain total control of the health care system, the people of Ontario had better come to grips with one very important concept: that the ultimate delivery of all health care services in Ontario will rest in the hands of the government; not of the doctors or the patients, but the government.

I will not dwell on what this will do to the system, nor will I dwell on what government intervention has done to the system in the past--as my time is limited to 15 minutes and not 15 days. Patients and doctors alike had better be aware that when a patient comes to see his doctor, there is a third party in the room: Big Brother. The degree to which he dictates a doctor's and a patient's actions depends on the degree to which he can specifically command the other two parties.

In the education of every physician, the patient's wellbeing always comes first. Between a patient and a doctor, there is a bond of mutual respect and trust. This relationship has existed for thousands of years, long before governments became involved in health care. It was not the government but the doctors of this province who first initiated social health care programs.

A patient comes to his doctor with a problem and expectations of how that problem should be solved. The doctor treats the patient with compassion, understanding and a knowledge of what is available for the patient. Together,

they arrive at a solution. This formula, this interaction, has worked for thousands of years. Bill 94 is a wedge that the government is trying to drive between the patient and his doctor. It is an attempt to erode this special relationship.

With this legislation, there no longer will be any room for the full, necessary interplay between the doctor and the patient. The government will dictate what a doctor can dispense and what a patient can receive. If either party in the doctor-patient relationship wants something different, it will be too bad as far as the government is concerned.

This is not to say that there is no place for the government in health care. The question here is one of degree. The government claims the issue at stake is one of accessibility. It says health care is a right that everyone should receive. Of course, health care is a right; we agree. Our point is that the health care system is virtually completely accessible as it now stands. Everyone has the right to the necessary basics of health care; no charge. This is more than can be said for the other basic human rights: the rights of food, clothing and shelter.

11:10 a.m.

The poor of our province may go hungry; they may walk about in rags; they may stagger around looking for shelter. However, no one in need is ever turned away from a hospital. Anyone can walk off the street into an emergency room and receive the most up-to-date health care available. They do not have to "bare their wallets," to coin a political catch-phrase the Minister of Health (Mr. Elston) loves to use. The reason I asked the last person to produce his wallet was to try to find out his last name. Naturally, "Bill" did not have a wallet and could not quite recall his surname. All he knew was that he was from Hamilton and that he had been in Toronto for about a week. I would feel safe in wagering a bet that Mr. "Bill" did not even know what the Ontario health insurance plan was, let alone pay into it. If I told you that we had tossed Bill out the door, the Toronto Star would have a field-day with it, Libya or no Libya. I hate to disappoint its editors, but Bill received the same efficient, professional treatment as everyone else. The system is full of "Bills," all of whom are cared for as best the system will allow.

I do not plan here to get into the philosophy of socialism, or the concept that every one of the eight million-plus Ontarians can be given exactly the same level of health care. For example, if a person had a myocardial infarction in this room, he or she could expect to get a more rapid and higher quality of health care than an individual who had one in the bush 200 miles north of Timmins.

The government cannot put a Toronto General Hospital on every street corner in the province. However, it is important that the government sets a standard on the health care scale, below which none of the residents fall. The "Bills," the financially pressed seniors and students such as myself need to be protected. Fortunately for me and others, the government attempts to do this via social programs. The Ontario Federation of Medical Student Societies commends them for their ongoing efforts.

However, what if the level that is set borders on the inadequate, as it does now? With the passage of Bill 94, the individual no longer will have the right to seek out privately a higher standard in this province. He or she will need to turn to the United States. Why should a private citizen be told by some here-today, gone-tomorrow politicians that he must adhere to the standard

of care that this government sees fit to administer. If a lens implant is more important to me than a television--after all, what good is a TV without vision--then why cannot I privately attempt to get the proverbial Cadillac of implants without a lengthy wait, especially when the government sees fit to provide me with only a Pinto?

The government accord that we have today says, "The people want this bill." How can Mr. Peterson et al can push this through on a supposed majority, a majority that incidentally is dwindling daily? He just does not tell the electorate in so many words what this legislation is: another step towards socialized medicine. He was hoping for an early, easy whitewash. After all, most of the other provinces rolled over and submitted. However, no doubt he privately believes that he has bitten off more than he can chew.

While trying to sidestep the outcome of socialized medicine that this bill will lead to, the government attempted to paint a distorted picture of the problem and at the same time presented a clear, simple solution. Robin Hood Peterson and his band of merry men will squash the injustices of Sheriff Myers at the OMA forest. All that is missing is a white horse tied up outside this building. He hopes the outcome will be lots of votes at the polls.

If I might digress, this will be the outcome. If this government were very serious about the quality and the standard of health in this province, I could think of a dozen easier ways to improve it, for example, banning the tobacco industry, but I do not think that would generate the same number of votes. However, that is how politics work.

It is even easier when large portions of the media are clearly on your side, ferreting out what may be isolated examples of injustice and splashing them all over the front pages of their publications. So what if, after attempting to smear large portions of a conscientious profession with hurried, irresponsibly published articles, they are then told of some glaring mistakes they have made? All they have to do is print a correction, after a lengthy wait. Besides, they can bury it in the paper anyway. Freedom of the press? I would have a lot more respect for the phrase if the word "responsible" preceded it.

I am not digressing here. I am merely pointing out that if there is a majority out there in support of this bill, it is because the people of this province do not know the full, real story. This is one of the reasons that the OFMSS is concerned. For some time we have been told that the government is immobile on this issue in principle; yet this committee, for example, has not even finished hearing briefs. Am I to assume that if this committee suggests Bill 94 be withdrawn and reviewed, it will be ignored? Our body gets the overwhelming feeling of things being rushed. Health care is too vast and important an issue to rush. There are many other areas that need to be addressed.

The Health Care Accessibility Act: where is the real lack of accessibility? Why do people have to wait months or years to enter a facility that will care for their ongoing needs and rehabilitation? They need care that cannot be provided for by acute remedies. They need the help that hospitals are not equipped to give. Yet the government has not addressed the need for adequate funding of services such as chronic care and rehabilitation facilities, facilities which are becoming ever more crucial as our senior citizen population grows. The bill purports to address the accessibility problem, but this bill does not add one single bed to any hospital in Ontario.

We have talked about the patient's rights. What about the rights of a physician? Why have we been made to feel guilty about advocating our human rights? Medicine is not a union; it is a group made up of individuals who practise the healing art. These humans are entitled to their human rights as well. As members of a democratic society, we have the right to apply our skills and interests to our chosen field. We have, for example, the right to work wherever we choose, despite what the British Columbia government thinks.

As future doctors, we are scared. Our rights are being threatened. Bill 94 is a stepping-stone to further legislation and restrictions. This bill will put us at the mercy of the politicians. In fact, we already are. The government will become our boss, and I promise you that as soon as the government has control, it will institute measures to determine where and what we can practise. Thanks to the verbal musings of the Premier (Mr. Peterson), Bills 95 and 96, etc., will not come as that great a shock to us.

Do doctors have the right to strike? Personally, I believe not. However, I am still a little naïve when it comes to politics, and I have not yet been treated as a disposable resource. Perhaps my views will change. After all, to what other options do I have to turn?

Quite frankly, I am distraught. Ever since grade 8 I have wanted to be a doctor, and my views and impressions of medicine have remained basically the same. It is an exciting art that gives me a good feeling when I partake in it. Yet at times I find myself having to defend my career decision because this government and segments of the media continuously portray the present embroilment as a dollars-and-cents issue. It is very frustrating to watch, read and listen to some of the utter nonsense regarding this bill and the profession in general. The membership of the Ontario Federation of Medical Student Societies is fed up and wants this issue discussed sensibly and not via biased, misleading editorials.

I feel the public is beginning to realize there is more involved than meets the eye. Why would so many doctors be solidly unified on this issue if it were as clear-cut as the government, the Globe and Mail or the Toronto Star would have us believe? Let us please allow cooler heads to prevail and methodically have the issues reviewed by individuals in the know.

Medicine and politics should be separate. Unfortunately, they are not. It would be naïve of me to not realize that the union of these two entities is a necessary evil, but let us not make it so political as to forget about the primary directive: the health and wellbeing of John Q. Public.

The government thought it had something here with this bill. The doctors and the students who work in the system are sending a clear message: "Mr. Peterson, you are a little bit off track. Why ignore us just to save political face? Please be reasonable and listen to us." We are not all a bunch of Bob Whites, who may or may not have future political aspirations. We are the individuals who will be in the system for the next half century, and we do not want to see it fall apart.

The Acting Chairman: Thank you for a passionately argued brief.

Mr. Bernier: As a matter of information, how did your federation react--you have something like 2,200 students in your organization--to the Premier's comment that there were sufficient doctors in the province at present? There are 2,200 students out there going into the medical profession.

You are going to be the medical profession of tomorrow. What kind of shock waves did that statement send through your organization?

Mr. Preece: Personally, I was not too surprised at the comment. I took it for what I hope to be face value, that it was merely Mr. Peterson speaking off the cuff. I was hoping it would demonstrate to the students that if there is an excess of physicians in the province, we can only assume people are getting the health care they need. Having been in the system for only three years, I can state they are not getting the health care they need. There obviously is some confusion. The students know that. When they hear a politician say there are too many doctors in the province, they get a clearer view of what a politician might know about something.

Mr. Bernier: There must be confusion within your ranks when the Premier of this province makes such a statement. You have been studying for three years now. Does it send out some questions out to you as you head into a life in a profession such as this?

11:20 a.m.

Mr. Preece: I do not think the students were too worried about themselves. There might have been some concern for individuals who were applying to medical school this year or who had been considering applying to medical school. We are pretty much, I hope, committed to practise in the province. You are right. There is a lot of confusion in our ranks. The reason for that is we really do not know. We can see what is going on, we hear what is being said by the politicians and we do not see a lot of correlation. If you say there is confusion in the ranks, there is. If you are trying to suggest that I feel threatened about my job, I do. If I am told in the future that I have to practise in Wawa, as was suggested earlier, I might be a little distraught. I might not; I might want to go to Wawa, but I would like to make that decision on my own.

Mr. Bernier: You would love it.

The Acting Chairman: Spend a lot of time with Mr. Bernier; you would go there.

Mr. Bernier: You would even love Kenora, right?

Mr. Preece: Right.

Mr. Ward: Along the same lines, you seemed to express concern over some suggestions made by the Premier and others, including Mr. Grossman, at the beginning of these committee hearings that one of the future issues that will have to be addressed by the profession, the government and all those others who are involved, is manpower planning.

Given the fact that the internship positions in this province are tied directly to the number of graduates being produced by Ontario medical schools and notwithstanding--

[Interruption]

Mr. Jackson: Boy, I thought I was going to get an office change.

Mr. Ward: Will that go in my brief or get cut out?

The Acting Chairman: Try to carry on.

Mr. Ward: --notwithstanding the fact that those internship positions are tied to the number of medical school graduates in Ontario--last year in Ontario there were 650 to 700 graduates--1,400 new physicians were licensed, many of them from other jurisdictions; there were literally hundreds of foreign-trained medical school students in this province.

The growth in the number of physicians in this province last year was 5.8 per cent, whereas the population growth for the past three years has been static at 0.7 per cent per year. Do you think the government should encourage the college or whatever to remove restrictions on foreign medical graduates? Do you think the doors should be fully open for the obvious surplus of American-trained physicians to come into Ontario? As a student, are you not concerned about the impact of the influx by those numbers?

The Acting Chairman: Can you give a yes or no answer to that question?

Mr. Preece: First, let me say I am not worried at all about American students coming to Canada. If the medical profession and my ability to move across the border were included in the free trade talks, I would not have any concerns about our being swamped by them. At the end of every internship-matching that goes on in the United States, there are always empty spaces in American hospitals. One of the first places they call is the University of Toronto to see if there are any people here who need to be matched.

In terms of whether the government should suggest that the College of Physicians and Surgeons of Ontario lift whatever quotas it has on foreign graduate students, I think the government would be making a grave mistake by doing that. The government has basically taken the health care system into its own hands. At the moment I would not be concerned for myself about being able to have patients to see. I know there would have to be quite an influx of physicians into this province before my patient load was dried up. The government, on the other hand, would be concerned, because it has set up a system where basically it has to bear the brunt financially. It would be further eroded and could fall apart, and the politicians would look even worse.

Mr. Ward: Even though the number of physicians is growing at a rate eight times greater than the general population, as you enter the profession, you really have no concerns--

Mr. Preece: At this point?

Mr. Ward: --about that kind of growth rate and you cannot see that there would be any difficulty in establishing a practice down the road. Bear in mind there are 17,000 United States graduates every year as well, so there is a tremendous oversupply starting to be generated there.

Mr. Preece: Obviously, if this disparity in growth rate continues, there will be a surplus. It will not happen. You are presenting something here that I do not think is going to occur. Are we talking about a three-year span?

Mr. Ward: It moved from about 2.7 per cent in 1983 to 3.5 per cent in 1984 to 5.8 per cent in 1985. Obviously, it is accelerating. There is an influx; it is undeniable. The statistics bear that out.

Mr. Preece: From what I have been reading in the press recently, the College of Physicians and Surgeons of Ontario has attempted to address this issue. I am sure they are sorry they are not daily adjusting their percentages to keep up with population influxes. They can only go with Statistics Canada as well. I can take you through hallways in St. Michael's Hospital and show you the patients still in the hallways and I can show you the waiting lists to get in there. Let it keep growing because there are still patients who need to be seen.

Mr. Ward: You think it is appropriate that the issue continue to be addressed by the college and others.

Mr. Preece: Certainly. It is the college that is ultimately aware of what is happening.

The Acting Chairman: Mr. Preece, thank you for coming today. The next deputation is Dr. Daniel L. Keene. The brief is number 159.

DR. DANIEL L. KEENE

Dr. Keene: Thank you for allowing me to speak before your committee. This is the first time for such an undertaking on my part, but I have become increasingly concerned about the proposed legislation. I felt I had to express my feelings publicly as a private citizen of this province.

I have been practising medicine in Ottawa as an opted-in physician since completion of my specialty training in neurology six years ago. Prior to undertaking my specialty training, I practised general medicine as a public health physician in an isolated northern community in my home province of Saskatchewan as a totally salaried physician.

I have grown up with government-sponsored medicare. My parents were founding members and practised medicine under the system in Saskatchewan since its early days in Health Region 1, which was a model for the Saskatchewan government. It was formed in the late 1940s or early 1950s. They both supported it and taught it was the only method of health care. They both refused to go out on strike during the famous doctors' strike in Saskatchewan. They continued serving their patients. Thus I have come to believe in the very strong principle behind medicare.

When I first heard about Bill 94, I was rather uninterested. I felt that the Ontario Medical Association was overreacting to the situation with a lot of rhetoric. I felt it would not really change my practice as I never had any intention to extra bill my patients. However, when I read the actual bill that came across my desk, I became very concerned with its implications and lack of solutions to a very complex health problem.

My concerns are twofold. The first and foremost is the lack of democratic choice of the type of practice that the bill will allow. I am concerned that future generations of doctors will not be allowed to choose freely their type of practice as I have done. This will deny them their fundamental personal liberty that I have been raised to believe exists in this democratic society.

The proposed bill gives the physician the choices of being in the government system and billing the government rates, being out of the system and still billing the government rates or leaving the province and practising somewhere else where more choice is available. If you choose none of these,

there is a fine of \$10,000, which I think is rather steep considering the punishments for other offences that I read about in my daily newspaper, the Ottawa Citizen.

The title of the bill is my second concern. It is called the Health Care Accessibility Act, but does it really answer this question? Is the sole reason for lack of accessibility to health care because 12 per cent of physicians in this province choose not to be part of a prepaid medical plan? What about the 88 per cent of us, like myself, who freely choose to belong to a state-run program? Are these people not really available?

I would like to add at this point to my brief--it is not in there--that I service three community hospitals and for the past four days have been on steady call. I left my patients in the care of someone else this morning to come here from Ottawa, which means my wife will see me about midnight tonight when I return from doing this duty I feel is necessary.

11:30 a.m.

As well, does the act provide for the much-needed acute hospital bed? Does it provide for the intensive care bed in my community hospital when I or my family have a myocardial infarction? Does it provide for the chronic care facility when the patient is no longer able to take care of himself or herself alone, such as are many of my patients with Alzheimer's disease? Does it provide for the updated and much-needed laboratory equipment we are now facing? Will it even guarantee the same standard of medicare in 10 years as now and will it lead to more physicians being willing to locate in small or rural communities and isolated areas?

We already know health care is not the same in all parts of the province. If you live in Toronto, many more facilities are available to you as a patient than if you live in Timmins. Specialists and equipment are not equally distributed about the province. If they were, the provincial health bill would be even more expensive than it is. In those centres where the population base is large enough, it is economically feasible for those facilities to be readily available. In those centres where there is not sufficient population support, an alternative method must be available. For example, you have to have some form of rapid, safe transport of patients to specially equipped centres.

In large centres such as my home city of Ottawa the facilities are not readily available. Often I have to spend hours on the telephone trying to find a hospital bed for an acutely ill patient and then transport the patient across town to another hospital, often not a teaching hospital but a private community hospital because the beds are full in the teaching hospitals. On several occasions, the patients have to be held overnight in emergency departments because we cannot find a bed anywhere in the city.

The waiting list for the elective computerized axial tomography scan test is two to three months and that is in a city that has four CAT scanners at the present time. The elective electroencephalograph appointments are about a month, while the electromyograph appointments, a test for muscle-working ability, are two to three months. Daily I have patients asking why they have to wait so long. I have no answer.

Urgent requests can be done within hours, but this often means the elective patients are pushed down the list. Often physicians and the technical staff are forced to work overtime to accommodate this extra demand. The

equipment has also been pushed to its limits, resulting in breakdowns, often without adequate in-house backup facilities being available. Thus the patient will have to be transported across the city for a test and then transported back. Just two days ago, in doing so one of the patients had a cardiac arrest in the other hospital's scan room.

Will Bill 94 change the situation? I am afraid I could not find the answers to my questions clearly written anywhere in your act. Sure, you will receive moneys from Ottawa owing to the province if this act is passed by the end of this month. These moneys, according to the government press releases, will be approximately one to one and one half per cent of the currently budgeted provincial moneys.

Will this be sufficient to provide improvements in the services I have just listed? If not, and I personally believe it will not, where does the government plan to get the needed cash? Do they plan to increase our personal taxes or shift more money from other areas of the budget to health and welfare, or do they plan to enter into extra billing as they are doing now with some patients in chronic care centres? Some of my patients now are complaining that if they are on old age pension benefits, these are tapped by the institutions to pay for some of their care. These are municipally run institutions.

Is this bill just the beginning of the real future in which the government decides where physicians can practise by limiting billing numbers as is the case in British Columbia, decides how many physicians can practise in the province as the Premier (Mr. Peterson) has hinted in his recent press releases and speeches, and decides how much money a physician can earn despite the number of hours he is forced to put in? If these scenarios occur, will physician and medical accessibility truly be improved?

I know I have asked a lot of questions for which I do not have answers, but I would like to say in conclusion that I have freely chosen to be an opted-in physician because I believe in the principle behind it and I think the government should be selling this principle to the new physicians. However, I find it very hard to support the bill as it stands because it does not address the issue of ready accessibility to health care in the larger sense. It is also undemocratic in its punishment. I would support a broader approach to a very complex problem such as an all-party commission to study health accessibility, rather than the politically expedient bill that is before us now.

The Acting Chairman: Thank you, Dr. Keene, for coming from Ottawa to share your views with us. Members of the committee? The next deputation is David Rotenberg. Mr. Rotenberg, I expect you understand the procedure.

Mr. Rotenberg: Yes. I am sorry. I am fighting a cold.

The Vice-Chairman: Keep your germs to yourself.

DAVID ROTENBERG

Mr. Rotenberg: Thank you for this opportunity to present my views on this very important matter. I know that by this time you have probably heard it all, but I will try to give you a slightly different approach. Possibly I can assist you in reaching a solution. I will try to be brief.

By now everyone agrees there is a problem with extra billing. Some, and how many is in dispute, who are on low incomes cannot afford to pay the extra billing amount and either go without medical attention or pay the extra bill and go without some other necessity of life. Almost everyone agrees this is not acceptable in our society. I submit the problem is not nearly as widespread as the proponents of this bill are telling us.

Those who cannot afford extra billing are roughly the same group as those on Ontario health insurance plan premium assistance--seniors, those on the many forms of social assistance and those on low incomes. The OHIP estimate of those who are on premium assistance is roughly 30 per cent of our population. Even though 12 per cent of the doctors are opted out of OHIP, we know that only five per cent of the billings are from opted-out doctors. It is probably a safe estimate that only about five per cent of this 30 per cent group who cannot afford extra billing are exposed to opted-out doctors; that is, about one and a half per cent of our total population.

We know that some of our opted-out doctors do not extra bill. We also know that the vast majority of those who extra bill, such as the gentleman who was here two before me, do not charge those on low incomes and seniors. There is an estimate that only about 20 per cent of those who extra bill, extra bill seniors and those on low incomes.

If only one and a half per cent of our population is exposed to extra billing and 20 to 30 per cent of them actually get extra billed, we can estimate that about one half of one per cent of Ontario's people are having problems with this practice. Maybe I am low on this estimate, so double it. However, less than one per cent of our citizens are negatively affected by the extra billing practice. If this figure were really greater, there would be far more horror stories in our media.

This group of less than one per cent of our people must be accommodated. The Ontario Medical Association on many occasions has offered some form of restraint on its members; that is, no extra billing of all those on premium assistance. I believe the OMA makes this offer in good faith and really means it, but the OMA does not have legal authority to enforce a ban. Even if 99.9 per cent of its members complied, that would leave 0.1 per cent or about 17 doctors who could extra bill the wrong people. Even if they did this only once a week each, we would have about 900 people per year who are wrongly extra billed.

To complicate this problem, a number of our seniors and those on social assistance have been intimidated by all the recent negative publicity and are afraid even to approach a doctor in fear of being extra billed, even though they may not be. The proponents of this bill state that extra billing must be banned and it must be done by legislation so that all have equal access to medical care. I think this point is well taken. But, and there always is a "but," what is the position of our doctors and why are they so against this bill?

I am convinced the main reason is not money. The government has offered to compensate the doctors for what they might lose by extra billing. The government has also offered to set up a system of extra pay for merit and for years of experience. This will probably cost the government more than if it paid the federal penalty for keeping extra billing. The doctors reject this concept because it will be the government or a government-appointed body that will set these fees. Each doctor in Ontario considers himself or herself an independent, self-employed professional. Under present rules, each doctor has

the right to set his or her own professional fees, as do other professionals such as architects, engineers, lawyers and accountants.

11:40 a.m.

What then is the OHIP schedule? OHIP is the Ontario health insurance plan. The plan insures the patients, not the doctors. The OHIP schedule sets the amount the plan will reimburse the patient, regardless of what the doctor charges. Each doctor has the free choice of setting his fee at the OHIP reimbursement rate or higher. I do not know whether any do it, but they could set the fee lower.

Today more than 88 per cent of Ontario doctors have made the individual decision to set their fee schedules to correspond with the OHIP schedule, but, and this is the important "but," 99 per cent of these doctors want to keep the right to change their fee schedules in the future if they so desire. They feel this is their safety valve. They feel this is a symbol of independence. Many doctors who have come before you have told you this. They feel, and I agree, that once the right to set their own professional fees is taken away from them, something no other profession is threatened with, they are the captives of those who control the purse-strings and the loss of other rights could follow, such as the ability to set their hours of work, the type and location of practice.

I know many doctors who are not in the Ontario Medical Association leadership. I have gone through other doctor-government confrontations with them. I have never seen so many doctors as upset as they are today. Most of them admit there is a problem with extra billing, but they ask why their professional independence is being attacked when the problem really affects less than one per cent of our population and there are other, less violent solutions.

We have what I consider to be two legitimate positions that seem diametrically opposed. Can this dispute be resolved reasonably? I think we can find the method of reaching an acceptable solution.

The problem is with less than one per cent of our population, who are part of the 30 per cent of the population everyone agrees should not be extra billed because it would be a hardship to them. What about the other 70 per cent of us? I speak first about myself. I have been extra billed. If asked my preference, of course, it is not to be extra billed, for the same reason I would like to go back to three per cent sales tax and gasoline at 20 cents a litre. Like everyone else, I want to pay as little as possible for the goods and services I purchase. However, just as I now have to pay the seven per cent sales tax, I also pay when I am extra billed as this will keep the integrity of the profession. It is a small price to pay for our excellent health care system.

I can afford to pay this small amount of extra billing. It is very small when compared to the total health care bill that is paid on my behalf. Every member of this committee also can afford extra billing, as can every member of the Legislature. I was here when Bob White was before you giving his support to this bill. I certainly do not want to pick on Bob White, but I suggest that he and all members of his union can afford extra billing without any hardship. This can be said for about 70 per cent of the people of Ontario.

I have heard no valid reason why extra billing must be banned for those who can afford it. I therefore suggest the banning of extra billing be brought

in in two stages, with stage 1 to be legislated immediately. It would ban extra billing for seniors, those on social assistance, those on premium assistance and for hospital emergencies. This is the grouping the OMA suggested. There could be a similar grouping this committee or the government may feel is more appropriate. This would be clearly stage 1 so that the government would not have to give up its principle of a total ban on extra billing at a later date, if necessary. This would remove from the table, at least for now, the part of the legislation that the OMA feels puts a gun to its head. This would allow the doctors, as they have said to us so many times, to enter into full and meaningful negotiations in good faith.

By a stage 1 legislative ban, the government and the OMA will each get something and neither side has to give up any of its principles for the time being. Surely between now and, say, next February there will be enough time for quiet talk, enough time to find an acceptable alternative solution if there is one and enough time for stage 2 legislation, if necessary, before April 1987.

There are still those who insist on a total ban now. They say anything less is two-tier health care, one for the rich and one for the poor. I totally disagree. It is one-tier health care. Everyone will have access to the same treatment, regardless of ability to pay, but some who are better off financially will pay more. It will be two-tier payment, not two-tier health care.

But if there is a real worry about two-tier health care, look at the hospitals where everyone gets reimbursed for standard ward coverage but if you can afford it, and only if you can afford it, you get a semi-private room or a private room, where the patient gets much better service and much better health care. Those who preach against two-tier health care should go after this practice in hospitals and leave the doctors alone.

The other major objection to a partial ban is those who cannot afford the extra billing may not be asked to be relieved of this burden; but if it is done by legislation, all who require the exemption will be exempted by law and some coding will be put on their Ontario health insurance plan card. Then these patients will not have to ask; they will be entitled by law to exemption and will automatically be exempted from extra charges. It will be like the drug card. Those who have the drug card get free drugs; the rest of us pay. I am sure there has not been one case of a senior or welfare recipient who was too proud to use a drug card.

I recognize there are two very practical political problems which will be raised by the approach that I suggest: First there is the Liberal-New Democratic Party accord, which calls for a total ban on extra billing; but there is precedent for two-stage implementation. The Liberals had pay equity legislation for government employees only, leaving others to a second stage of legislation at some future date not yet determined.

I suggest the women in the private sector of this province have a greater need for pay equity legislation than do middle-income earners need protection from extra billing. If the Liberal government can do pay equity in two stages, they certainly can deal with extra billing in two stages. Our Premier, who can muse about a health tax on the rich, can certainly allow these people to be extra billed for a few more months.

A second and more serious problem is the federal legislation and its penalty clause. We are told that keeping even partial extra billing will cost

Ontario \$50 million per year. I suggest this \$50 million is a figment of Monique Bégin's imagination. We do not know if it is \$7 million or \$70 million but most people suggest it is at the lower end of this scale.

I suggest that the regulations be amended immediately so that all opted-out doctors, when submitting their bills for OHIP reimbursement, also be made to report the amount they are extra billing. This is not required now, but if this regulation is changed by next January or February when we are back at it again, there will be at least six-months reporting. We will know exactly how much the federal penalty really is and whether it is something we can stand.

Also, the Nielsen report, recently released in Ottawa, is suggesting this penalty might be removed. Therefore, I suggest the government approach Ottawa and ask that the federal act be changed as Nielsen has suggested. However, I agree that this is unlikely to happen before next April. If and when this request is turned down, Ontario should ask the federal government for a two- or three-year extension of the April 1987 deadline.

I feel there is a very good chance of success for this when we tell the federal government that those who might suffer by extra billing, have already been looked after and the government of Ontario is working with the doctors to find a possible alternate solution to the rest of the problem. If Trudeau gave the province three years to work out a solution, surely Mulroney will give us at least two more, especially in the light of the Nielsen recommendation. Then the government of Ontario and the OMA would have ample time to work out an alternate solution for the other 70 per cent, if one can be found.

As I have said, I can find no valid reason for banning extra billing for those who can afford it, provided those who cannot afford extra billing are looked after. Certainly there is no valid reason for not trying this two-stage approach. That is the partial banning of extra billing for a year or so to see if a better solution can be worked out. By taking this two-stage approach, stage one can be passed almost immediately with minimal controversy; then the government and Ontario Medical Association can start quiet, and what I hope will be fruitful, negotiations and the rest of us can get on with other things.

In summary, I suggest that for now the government proceed with only the first-stage legislation: That the regulation be amended to require the reporting of the amounts of extra billing. That the federal government be requested to extend the April 1987 deadline; and the government enter into meaningful negotiations with the OMA to explore different solutions. If all goes well, these negotiations will reach a satisfactory conclusion. There might be an acceptable alternate solution to a total ban on extra billing.

11:50 p.m.

We all know things do not always go well. What is the worst-case scenario? What could go wrong? The federal government might not extend the deadline. The new reporting may show there really is \$50 million worth of extra billing. Even after six months of quiet negotiations, the government may be at this same impasse. If you adopt my suggestion, the worst thing that can happen from the government's point of view is that next January or February we will be right back to where we are now. There will still be ample time to pass stage two, if necessary, before April 1987.

At that time, the government will be in a much better political and moral position. It will have accommodated the doctors by withdrawing the

threatening parts of the legislation for the time being. It will have negotiated with the Ontario Medical Association without what the doctors call "a gun to its head." After all that, if there is still no agreement, the government can say it gave its best shot on the doctors' terms and will then have no choice but to proceed with stage two of the extra billing ban next March or April. At worst, there will be about 10 more months of extra billing for those who can afford it. At best, there could be a mutually agreeable alternative solution. Therefore, I ask this committee and the government to consider proceeding along the lines I have suggested.

Again, thank you for this opportunity to address you.

The Vice-Chairman: Thank you very much. Are there questions from the committee?

Mr. Bernier: I want to lead off by complimenting our former colleague on his presentation and recommendations.

Mr. Rotenberg, I hope you will run for office again because your kind of commonsense approach to serious issues like this are helpful in the Legislature. I am sure you could replace the person who replaced you and add something very significant to the deliberations that have been going on here for some considerable time.

The Vice-Chairman: Shall we take a vote on that now?

Mr. Reycraft: That is a nonpartisan comment.

Mr. Bernier: You have come up with some very Ontario-like solutions to a very serious problem.

Mr. Rotenberg: I hope this will not be treated by what the cynics say as "Do not confuse the situation with logic." I try to be logical.

The Vice-Chairman: Are there other questions from the committee?

Mr. Reycraft: I want to be clear on what Mr. Rotenberg is proposing. Are you suggesting that the solution that might be arrived at 10 months or so down the road will see a complete elimination of the practice of extra billing?

Mr. Rotenberg: I do not know. You have to make sure there is a ban on extra billing for roughly 30 per cent of the population. For the balance of the population, the solution may be a ban on extra billing. There may be some other form that the government and the OMA can find to solve what is perceived to be a problem. Quite frankly, I do not perceive it to be a problem for the other 70 per cent of the population.

In effect, the government has locked itself into having to go for a ban on extra billing. By taking the first-stage ban and taking some quiet discussion time, I am suggesting it may come up with a politically acceptable solution for itself and a practical, acceptable solution for the doctors, which may not require a ban on extra billing for the balance of the population. It may not come up with a solution and therefore may have to go for the total ban, but I think it is worth taking some quiet time, a time away from the glare of publicity and all the threats you have heard from both sides, to try and reach that solution.

Mr. Reycraft: Is your main reason for saying there is no major

problem at this time the fact that only five per cent of the physicians are actually extra billing? If the number was significantly greater, would your view be different?

Mr. Rotenberg: My view could be different. From my own practical experience as a member of this Legislature for eight years, and having spent a lot of time with seniors because I think my former riding has as high a percentage of seniors as any riding in the province, I had maybe two or three complaints about extra billing. The number of discussions I have had with seniors who indicate they have no problem with doctors is very high. As I say, I think the problem is minimal.

Having said that, even if the problem is minimal, I have run into cases where people cannot go to the doctor because they know he extra bills. Even worse, just recently, I have heard people will not even call a doctor because they are afraid they will be extra billed. Even though the problem may be minimal, we must take some legislative action for at least that 30 per cent group. It must be taken now so there truly will be total accessibility for all our population. The rest of us do not need this act for accessibility because we have it.

Mr. Reycraft: I have one more question. It is a minor point. In your presentation you refer to the fact you thought people in semi-private accommodation in hospitals are receiving better health care.

Mr. Rotenberg: Yes, there is no question about it. If you have a semi-private or private room, you get a little better treatment from nurses and doctors. It happens. I have seen patients in both. It is a little better health care because you can afford to pay for it.

Mr. Reycraft: I agree that one gains some degree of privacy through that accommodation, but having been in both situations, I do not agree--

Mr. Bernier: Are you covered under the--

Mr. Reycraft: I do not know. Am I?

Mr. Bernier: I bet you are.

Mr. Reycraft: I do not agree that the quality of health care I received in ward accommodation was inferior to that I received when I was in semi-private accommodation.

Mr. Rotenberg: The quality of nursing care is better in private and semi-private. That is my own personal experience.

The Vice-Chairman: That is in North York.

Mr. Bernier: It would be interesting to know how many members of the committee have semi-private care coverage.

Mr. Rotenberg: All members do under your plan.

The Vice-Chairman: Thank you very much for coming back and visiting with us.

The next presentation is from Dr. McQuade and Dr. Scott.

DR. P. J. MCQUADE

Dr. McQuade: One is him and one is me. I am wearing two hats, gentlemen. Dr. Scott was unable to come.

We are both from Stratford. We were both to speak as private individuals. He is an opted-in specialist and I am an opted-out one. Two years ago, the situation was reversed. That is almost my presentation. We were opted and not co-opted. I hope you will spare me a little time to read a few things I have.

I do not know whether anybody else sent you a whole book as part of a brief, but I did. You may remember seeing the book I sent you. Do not worry. I am not going to try to read it all to you.

I want to introduce myself as a Bégin bête noire, an English-speaking, opted-out anaesthetist. This is one of the main reasons I have come to talk to you. You knew when I opened my mouth that I was 25 years in Britain, in British practice, and I watched, quite candidly, social planners and dreamers causing mounting chaos because they clashed with the realities of medicine and the realities of life.

When I came to Canada 10 years ago I wanted peace from the word "politics" and I wanted to be allowed to work my own thing, which I knew how to do, in peace. But it could not happen. I am watching Canada make all the same mistakes Britain did. It would simply be socially irresponsible of me not to speak up. That is how a lot of my colleagues feel as well.

The nitty-gritty is that the purpose of Bill 94 is to deny elementary rights of free contract to a selected group of self-employed people. No other group of professionals in or out of the so-called health field is to be so deprived nor, I am sure, would ever agree to be so deprived. Various party dignitaries, I read in my Toronto Star, complained the other day that they had not heard anything new from the doctors. If these people would have credibility, I suggest it is amazing that they should ever have needed to hear anything from anybody at all. The issue is simple and it always has been simple; basic freedom.

We have been assured in ringing tones that human rights are not for sale in Ontario. Apparently, we find now that doctors' rights are there for the taking. I suggest that what is a good idea for doctors today may be an even better one to you tomorrow. As I will show, the enforcement of this bill would eventually lead to social disaster. Then we will probably hear the cry, "It seemed a good idea at the time." To my mind, such a piece of projected legal hocus-pocus as Bill 94 should never appear to be a good idea to anyone at any time who really cares for civil liberty.

Unfortunately, though it is not about money, it involves money. It is for this reason that those proposing this mischief are able to deceive themselves, and I am afraid the public, with oratory about three irrelevant and misleading topics.

12 noon

The first is mental confusion is produced by such bludgeon words as "extra billing" and the headlines. They are used to bludgeon people out of thought or certainly out of accurate thought, as the last presenter pointed out. He made it perfectly clear that he understood there are two books

published every year, a schedule of fees published by the Ontario Medical Association and the benefits published by an insurance company run by the state. When a doctor bills, he charges a fee. He does not do anything extra to anything; he does, as I am sure you have been told many times, just what every other professional does. An insurance company comes along and on certain business terms offers to pick up part of the tab. You very rarely get insurance covering everything. Practically all insurance underbenefits you. If you write your car off, you do not really expect to drive away in a new one of exactly the same vintage without being a dollar worse off.

Doctors are now told they are wicked for doing what everybody else does routinely. Second, apart from bludgeoning and misleading words and titles, is the boundless fascination of the public and media with the amounts doctors are supposed to earn. As with all aspects of economic and medical care, this could be discussed all day and all night. I would love to debate it with you, the Prime Minister or anybody, anywhere, but it is irrelevant to Bill 94, unless you found your social morality on the theory that different levels of income entitle you to different basic rights.

Third, the indignation industry gets into the act. We get the hearts and flowers, tales of embarrassment and hardship. The free medical profession has been a pioneer from ancient times until Ontario 1969 in considering and helping such cases. No human ideas in action will ever be perfect, but there is nothing in any of these cases which cannot be solved by trust and common sense unaided by any laws. If doctors are to be denied any worth in society except that of government over government-controlled insurance valuation, they and their skills and service will quite soon come to be crushed between the two millstones of unlimited and ever-growing demand on one side and vote-catching political promises on the other. I saw that in Britain. Whether the result will seem to you swinging Ontario 2000, Great Britain, Siberia or Auschwitz does not matter. At first the quality will go, followed quickly by all the other standards Ontarians now expect as a matter of course in the people they call doctor.

I saw it very nearly come to pass in Great Britain. Freedom was the saving factor then and will have to be so again. When I say this bill sentences a profession to death, I am not exaggerating. Dr. Johnson said, "Depend upon it, sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully." That is why all doctors have surprised all of you with their clear-mindedness and unanimity. They will reject this bill, to the point of civil disobedience, because to agree to it will be to deny everything they are. It is their social responsibility to see it does not happen. This cuts across all party lines. The freedom the profession demands is not incompatible with any democratic party's philosophy or hopes. Within the past four decades, since 1946, many clever people from the arts, economists, retired judges and professors, have all jumped on to the wagon with acts, reports, recommendations and charters about how I should go about my job.

For all their goodwill and academic talent, they all suffered, very understandably, from one disadvantage. They had not the slightest idea what they were talking about. After they have heard dozens of biased and partisan opinions, they were not only ignorant but also totally confused. I am going to ask, and I have timed it, for about four minutes, not four decades, of your time to reverse the process. Let an MD try to tell you politicians what the mess is, how you got into it and how to get out of it. Four minutes.

All this has resulted from the routine pattern of legal interference in

a private profession. Those of you who have read that little book will remember I described a charade in four acts. You are on the verge of opening Act IV right now. I shall not repeat the four acts. You stand at Act IV. I have seen the whole charade right through and in a few moments I am going to tell you the word at the end of it.

The first thing to suffer is language and with it, logical thought. Extra billing I have already dealt with. It is a completely misleading title and is a slander. Other dreams are all summarized in such words and phrases as accessibility, universality, one-tier medicine, health care delivery and health systems, of course. Some of these have now become much more than words; they are sacred icons. It is small wonder that economic chaos soon follows.

Accessibility there always has been. Nobody in any civilized society has ever really been stopped from visiting a doctor's office because of social status. To save people feeling worried about consulting about their health for financial reasons, we get a dogma called universality which, if you examine it honestly, simply means that doctors and hospitals alone must be prepared to pretend that everybody is a pauper. That is what it comes down to.

One-tier medicine is a favourite one. If you mean by that standards of treatment, then since Hippocrates there has only been one standard of treatment for any civilized, responsible doctor, and that was the best he was able to give. If you mean standards and different patterns of medical relationships, which is really what you are talking about, as you will find if you think about it, there are always, as there always have been and as there always will be, not one or two but up to 10 or more tiers of medicine. This is not because doctors treat patients by different standards; it is because patients treat doctors by different standards. I could spend all day regaling you with tales of the amazing things some people think doctors should do, but I will not. Do not worry.

Health care delivery is much the same sort of thing. It gives me the idea of a guy coming up the garden path with some crates and a bottle, whistling as he delivers. "Here is your health care today." Veterinarians can do that sort of thing and they do. They are very fine people too. Sometimes I wish I had been one-right now, for instance. But doctors cannot. It is not a matter of passing a standard product from a standard doctor to a standard patient under a standard system. It is the problem of supplying an absolutely endless and ever-growing demand with ever more strictly limited resources.

It is small wonder then that economic chaos soon follows when the costs begin to outrun any hope of meeting them in a free delivery system. You start off, figuratively speaking, hoping to feed hungry lambs and you end up trying to manage an alligator. Any fool of a country doctor could have told people this was going to happen. Now you can see this fool of a country doctor coming up and telling you why here.

The desperate solution in Act IV now appears. What has to be done, when generations have grown up believing it is not only unpleasant but immoral to think about money and medicine together, is that doctors must be asked to stop thinking of themselves as normal economic citizens because what they do concerns peoples' lives and health.

I remind you that many others sell advice on health matters for a living. Many paraprofessionals such as dentists, podiatrists and psychologists do it, and they are not what you might call orthodox doctors. There are others whom we might call the "antidocs," since they proclaim quite openly, honestly

and unashamedly a manner of treatment that would bring professional ruin on the orthodox. It is quite right that they have the freedom to do so, to offer their services to the public.

12:10 p.m.

All these, except doctors, are to be allowed free trade under Bill 94. You may call this social development; doctors call it AIDS, acute inflammatory double standards, and they will have none of it. There is no man here, or lady either I am sure, who could respect them if they would. You wanted me to tell you the final word of the charade, and I will. It is integrity, seeing and saying obvious truths clearly and seeing them whole. This I understand.

Oddly enough, ironically, it is a very difficult thing for a democratically elected member of parliament to do. Very often, you have to admit the mistake when you do it. Dictators can do it. One-party governments can do it and often have, but in your case, it is virtually certain that if you stand up here, there or anywhere and say, "Sorry, I was wrong," that means a loss of votes, and possibly power.

I understand how difficult it is. We all do. There may be a solution right here, paradoxically, in Bill 94 at this committee stage because, as I said, it transcends all party differences. If you, as an all-party committee, seize the opportunity now and report the truth to the Premier (Mr. Peterson), the government, the House and the people, then we may see something saved. I challenge you and beg you to do this. I ask you to throw out the catching daydreams and return to sanity. Otherwise, I assure you that in the end all the hard work you have done in this committee will be wasted. Your time will be wasted too, but I hope I have not helped you to waste it.

The Vice-Chairman: Thank you very much. Are there any questions from the committee? If not, we appreciate you coming in from Stratford this morning to present us with a very articulate brief.

Our final presentation this morning is from Dr. Louisy. This is exhibit 160. Welcome to the committee.

DR. SHEILA LOUISY

Dr. Louisy: Mr. Chairman, members of the committee, I would like to thank you for granting me time to address you on Bill 94. I am not here to oppose Bill 94 because of financial gain. I am here because I am angry, as are the majority of my colleagues, and I am very concerned about the future of health care in this province.

My name is Sheila Louisy and I am a specialist practising in the Burlington area. I am here to express the views of a solo physician practising in this community for 13 years, during this time seeing and speaking to an average of 30 patients a day. I think this qualifies me to be well-informed of the public viewpoint.

In my practice I see patients at my Burlington office and also at a weekly office in Milton, which is north of Burlington. I am on active staff at two hospitals, one in Burlington and one in Milton. I also attend three homes for the aged and at times I see patients in their own homes. I see patients of all ages, races and religions, and in my medical dealings with such patients I have not seen discrimination in the quality of their medical care in relation to race, religion or financial status.

I beg to disagree with the speaker previous to the last one. He made a comment that a patient in a private room has better care than a patient in a four-bed ward, for example. I do not see this. In an intensive care unit, where you have patients who are most ill, there is no such a thing as a private room.

My understanding of Bill 94 is as follows. If it is passed and becomes law, no doctor may charge for his or her services above the OHIP rate nor extra bill his or her patients. If this bill becomes law, any doctor who is now opted out or who wishes to opt out in the future will be breaking this law and may be fined, I am told, up to \$10,000.

I am opposed to Bill 94 because I feel doctors should retain freedom of choice as to how they practise and patients as to whom they seek medical help from. This bill not only restricts the doctors in how they practise, but also the patients in whom they want to go to see and whether they feel a particular doctor is worth paying an extra fee to.

We have all heard the statistics that 88 per cent of the doctors in Ontario have supported medicare, that is, 12 per cent are opted out. However, it appears only five per cent actually extra bill their patients. If these numbers were reversed and 88 per cent of the doctors were extra billing, I could understand your concerns.

My patients are referred by opted-in and opted-out general practitioners and specialists. In more than 13 years of practice, I have heard very few complaints regarding opted-out physicians. On the contrary, patients of opted-out physicians often seem to hold their doctors in higher esteem and stay with them for many years.

I sincerely believe that extra billing has never been a real obstacle to obtaining first-class medical care when needed. I practise within the OHIP system and I have never extra billed; however, I fully support the right of my colleagues to deal directly with their patients.

As you can hear, I am British and trained within the National Health Service system from 1958, qualifying as a doctor in 1963. I worked in hospitals and in general practice in England from 1963 to 1967. I saw tired, disgruntled and overworked doctors. I saw crowded and packed waiting rooms, with many patients waiting for prescriptions for aspirin, laxatives and tonics, all of which were also free under the National Health Service.

I have not worked in England since 1967, so I cannot comment on the National Health Service as it is now from a professional point of view. My family still lives in England, however, and I would like to illustrate briefly how the system works now by their recent experiences and give you two examples.

My parents are patients under the National Health Service which gives free medical care for all. In 1984 my father, aged 78, had a severe haemorrhage from the bowel, and I happened to be home at the time. He bled to the point of going into shock, but there was no available hospital bed. He had to wait three weeks to have an X-ray to determine the site and cause of the bleeding. In Ontario today, such a patient would be admitted to the hospital within hours and have appropriate tests and treatment within the next 24 to 48 hours. My mother, aged 79, has long needed a hysterectomy. The waiting list for this operation in England now approaches three years. While waiting, she has developed a heart condition which may preclude surgery.

You can see how accessible health care is at present under the free medical care service in England. Please look at the British example and experience and learn by it. Please do not repeat the same mistakes here. Since the 1950s, many of the cream of Britain's doctors have left Great Britain, frustrated over their careers, working conditions and hospital facilities. If Bill 94 is passed, I am sure Ontario and Canada will also stand to lose many of their doctors to the United States and elsewhere. I believe yesterday a colleague of mine, Dr. Larry Komer, also from Burlington, was here, and he passed out to you Texas licence plates to indicate his feelings.

12:20 p.m.

Bill 94 is entitled the Health Care Accessibility Act. As I said, in my experience, no one has been unable to get medical care when needed. The opposite side of the coin is happening far more often: that is, patients who seek medical advice for minor ailments, such as the common cold, a small cut or a minor sprain, all of which were handled by mothers with common sense when I was growing up.

A young woman patient of mine in Milton sought medical treatment for a minor skin condition on her hand from four general practitioners in Milton and four different dermatologists in Burlington and Hamilton. She had total accessibility to health care and she abused this privilege. If anyone is asked whether he would like to have something free, of course the answer will be yes. However, those patients who think beyond that realize that "free" does not mean "better."

There is, obviously, no perfect system, and I am not saying our present system of health care is without flaws. Utopia is a perfect, beautiful world that existed in the mind of Sir Thomas More but can never exist here on earth.

We, the physicians, and the Ontario Medical Association wish to negotiate with the government over billing problems. Many opted-out physicians already voluntarily do not extra bill senior citizens and patients on welfare.

The Halton County Medical Society in my region made the following proposal to the QMA:

No patient will be billed above the Ontario health insurance plan rate in the following situations: (1) if he is seen in an emergency; (2) if he is over 65 or on a pension; (3) if he is on welfare or another form of government assistance; (4) if the referring doctor requests it; and (5) if the patient states any difficulty paying above the OHIP rate.

I and my colleagues are fearful that Bill 94 is the beginning of total government control of health care and associated health care disciplines. Indeed, it is happening at present with the pharmacists and it has happened in other provinces. I and my colleagues recently learned of government control on how many blood tests a general practitioner may order on his or her patient.

Ontario has had an excellent health care system during the past 16 years, and the problem is that you, members of the committee, and the majority of the public have never experienced anything else. You cannot appreciate what you have.

I have lived and worked in England, in Jamaica for two years and in Canada. If I am ever seriously ill, I hope I will be in Ontario at the time. Patients who have come here from England or who have been taken ill in the

United States know and appreciate what an excellent medical care system we have had and know what accessibility really means. It never ceases to amaze me that anything good or anything that works well is rarely praised by the press or in the media.

If Bill 94 is passed, you will antagonize our profession and take away our professional freedom. You will undermine our professional integrity and conscript us into becoming unwilling civil servants.

Many doctors, myself included, have signed to say that we will opt out of the Ontario health insurance plan if Bill 94 becomes law. We are law-abiding citizens. Now we will have to search our consciences to see how far we are prepared to go over a matter of principle.

Up to the present time, my worst legal offence has been to obtain a speeding ticket. Now I must decide whether to opt out in protest against Bill 94 and thereby break the law. If I am fined, I must decide whether I wish to or can pay the fine or choose to go to jail. I will have become a criminal overnight, and my fines may be five times higher than the \$2,000 fine levied on a drunk driver, who can potentially kill someone. How is the seriousness of my crime deemed to be worth a fine of up to \$10,000?

The confrontation between the government and the medical profession over Bill 94 is demeaning to both sides, wasting time and energy. I would respectfully suggest that Bill 94 be tabled and amended after mutual discussion and agreement between our profession and the government. Cool heads are needed as well as a long, hard, intelligent look at the health care costs and problems in this province.

We all know that urgent measures are needed to look at the rising costs of health care, the high costs of modern technology and the growing problem of accessibility of hospital beds. The problem and complications of an ageing population also need our urgent attention, which is long overdue.

Let us all work together, government and physicians, to solve this confrontation with dignity and integrity. The people of Ontario deserve the best health care possible, and we, the doctors of Ontario, want to provide it.

Thank you for your attention.

The Vice-Chairman: Thank you. Are there questions from the committee?

Mr. Bernier: What is your specialty?

Dr. Louisy: Dermatology.

Mr. Bernier: I noticed that you are very active in the town of Burlington, at the Milton District Hospital and in attending homes for the aged. I gather that some of this work is over and above the call of duty and a lot of it is part of your community involvement. If Bill 94 should go through as it is written, do you see yourself having the same interest in the community that you have now and contributing much of your free time?

Dr. Louisy: If Bill 94 is passed, I do not see myself changing in any way the way I practise now or behave now, but I cannot say the same for all members of my profession.

Mr. Jackson: Your practice would bring you in contact with an awful

lot of senior citizens. How do they feel about this bill? I am sensing a growing change in their attitude. Are the public as concerned about some of the points raised in your brief, or are they looking at it merely in the narrow sense of extra billing for some? Obviously, your patients are not paying anything above the insured rate, but how are seniors generally concerned? Are there a lot from the British Isles who understand the system over there? Have they expressed concerns similar to those you have raised?

Dr. Louisy: There are quite a number of British people in Ontario who have my feelings. This has gone on now for three to four months. I think the public have become more aware of the issue involved and they are realizing it is not just a matter of extra billing and money. Many have expressed concerns to me, and many senior citizens would still wish to pay extra to some of the doctors whom they wish to attend. Just because you are over 65 does not mean to say that you cannot afford to pay the doctor whom you choose. I think many patients are very concerned that they may be restricted in whom they wish to go and see.

Mr. Jackson: My one final question has to do with the reference to the opting out and the fine. My concern is that we have heard from several patients, both through letters to the editor and, on one or two occasions, before the committee, that there was an avowed intention on the part of certain patients to pay the OMA rate. As the one deputant said, "I have never asked for a free lunch or a free ride and I do not intend to take one, even if the government provides it for me."

That creates a dilemma because nowhere in the bill are there any rights for a patient to do so. Yet if a doctor complies with that wish, if he or she is an opted-out physician and is given a cheque for \$5 or \$8 above the amount for any given item, then it is the doctor who will be put behind bars. Do you want to comment on the patient's right not being addressed in any way in this legislation?

Dr. Louisy: I stated at the outset that I think patients have a right also, which is going to be taken away from them as well as from the doctors.

The Vice-Chairman: Thank you very much. Just one correction, Mr. Jackson: I do not think there is any section of Bill 94 that talks about a penalty of putting the doctors behind bars. There is a penalty; there is no doubt about that.

Mr. Jackson: In this province if you do not pay your court charges, are there not implications to that?

The Vice-Chairman: I do not think that is the intention of the bill.

Mr. Jackson: Are you clarifying that or are you clouding the issue?

The Vice-Chairman: Mr. Jackson, if anyone has clouded this issue during the time we have been debating this bill, take a look at Hansard and read your questions.

Are there any other questions from committee members? Thank you very much.

The committee adjourned at 12:31 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

HEALTH CARE ACCESSIBILITY ACT

TUESDAY, APRIL 15, 1986

Afternoon Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Joaston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Cooke, D. S. (Windsor-Riverside NDP)

Bernier, L. (Kenora PC)

Davis, W. C. (Scarborough Centre PC)

Jackson, C. (Burlington South PC)

Miller, G. I. (Haldimand-Norfolk L)

Offer, S. (Mississauga North L)

Reycraft, D. R. (Middlesex L)

Stephenson, B. M. (York Mills PC)

Swart, M. L. (Welland-Thorold NDP)

Ward, C. C. (Wentworth North L)

Substitutions:

Guindon, L. B. (Cornwall PC) for Miss Stephenson

Reville, D. (Riverdale NDP) for Mr. Swart

Clerk: Carrozza, F.

Witness:

From the Ministry of Health:

Elston, Hon. M. J., Minister of Health (Huron-Bruce L)

ERRATUM: In issue S-177, the first line of the second paragraph on page S-3 should read "costs the state."

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Tuesday, April 15, 1986

The committee resumed at 2:07 p.m. in room 151.

HEALTH CARE ACCESSIBILITY ACT
(continued)

Consideration of Bill 94, An Act regulating the Amounts that Persons may charge for rendering Services that are Insured Services under the Health Insurance Act.

Mr. Chairman: I call the meeting to order. This afternoon we have the Minister of Health (Mr. Elston) with us to discuss some of the questions about expanding the parameters of the committee that have been broached recently, specifically around the task force that has been alluded to by the Premier (Mr. Peterson).

Before we get going on that, Albert Nigro has now put together the compendium of amendments he has received for the two pharmacy bills, Bills 54 and 55. They have been laid out with the January amended act of the government in the left-hand column, the proposed amendments and whom they are from in the centre and explanatory notes beside them all the way along. That should be a good guide to us when we start clause-by-clause tomorrow morning. Even though further amendments may arrive, at least this will be a good guide for proceeding. Tomorrow morning I will suggest the best approach for that.

Perhaps we can begin with the minister giving us some clearer idea of what the Premier was meaning to tell us in the letter, and anything else he would like to talk about in that broad range of things.

Hon. Mr. Elston: As the Premier has indicated, there were discussions. It was clear from the presentation last Thursday that the Ontario Medical Association--at least one representative of that group and the OMA in general--knew of the discussions with respect to a large overall review of what was going on in health care in the province.

It is also quite clear, however, that the entire program got no further than initial discussions among a group of people assembled to consider what might be possible. It is clear to me as well that what the Premier was hoping to accomplish by writing to you was to acknowledge your concern as a group of people who have heard through the deliberations an expression of an idea about some health care concerns in the province.

From that standpoint, he was hoping the committee would suggest what had been heard here and perhaps could submit advice to the Premier on formulating further responses to putting the task force in place and tell him what your thoughts were as to where the committee or task force or whatever you want to call it might direct its attention. It is quite clear that there are no members, no one has been appointed, there is no committee. There have been no meetings of a constituted committee.

The Premier is open to any suggestion which might be put in front of him with respect to help from committee members or others who have sat in on these

deliberations. That is the situation. If there were a committee in existence, if there were members named, if there were terms of reference, I would be pleased to snare those. There are not and I cannot share any information that does not exist for the purposes of discussion. I have to leave it at that.

Mr. Chairman: We have a couple of questioners. Perhaps things will be amplified as we go along.

Mr. Reville: Then it can be made absolutely clear that Bill 94 is not to be dealt with in the context of an emerging committee to look at health care in general?

Hon. Mr. Elston: No. Bill 94 is here and you are deliberating upon it.

Mr. Reville: We have noticed that.

The concern we have, Minister, is that we hear about committees which will review the health care system in general. We do not know what the terms of reference are. We do not know who the membership is. You have now told us there is no membership and there are no terms of reference at this stage.

I want to make it clear that what we are doing here in respect of Bill 94 is looking at a discrete aspect of the health care system and that, when we get this done, it will not somehow be subsumed into a larger look at the health care system.

Hon. Mr. Elston: I do not know how to express this in answer to your--

Mr. Reville: Yes or no would be great.

Hon. Mr. Elston: The situation is whenever you have an analysis of a system, you take a look at many of the facets that go together to make up that system. I can indicate to you that there is no committee established with a mandate to do any particular thing, but we are considering the need for a review. That is why the Premier wrote the letter indicating he was agreeable that the committee could be of some assistance by recommending where some efforts might be directed in setting terms of reference. That was quite clearly what the Premier intended to indicate to the committee. He was hoping that you might be of some assistance in providing some ideas that might be deliberated upon by eventual members of a committee.

Mr. D. S. Cooke: To follow up on that, last week when the OMA representatives were before this committee, they indicated that their compromise proposal to you was the establishment of a task force, a committee or whatever. One of the aspects of that committee would be to look at the whole issue of extra billing. Can you simply tell us whether that compromise is under active consideration by the government or whether the passage of Bill 94 is separate from any consideration of the establishment of a committee to look at the future of the health care system?

Hon. Mr. Elston: We are moving ahead with the legislation. The task force idea was something that was generated several months ago by the Premier. He had suggested on occasion that we might take a look at the overall context of health care. A component of that has been picked up by the OMA in its offer, if you want to put it that way. Let us be quite honest. The bill is and has been in front of this committee. We have been doing our work in accepting public representations and we are moving along with the bill.

Mr. D. S. Cooke: I want to be perfectly clear that the position of the government is that the establishment of a task force or a committee is not related in any way to the passage of Bill 94. The passage of Bill 94, a ban on extra billing, will proceed regardless of any potential use or establishment of a committee.

Hon. Mr. Elston: We are proceeding with the bill. That is quite clear. The indication is that we are anxious to move ahead with this legislation so we can get on to other major health care issues.

Mr. D. S. Cooke: This compromise is not under active consideration by the government.

Hon. Mr. Elston: Which compromise do you mean? Setting up a task force?

Mr. D. S. Cooke: The compromise of this committee and the delay of Bill 94.

Hon. Mr. Elston: It is unfair for you to say we cannot consider setting up a task force. That is not right.

Mr. D. S. Cooke: That is not what I said. I said this compromise idea of setting up a committee and delaying Bill 94, as suggested by the QMA.

Hon. Mr. Elston: I just said quite clearly that the bill is moving along.

Mr. D. S. Cooke: When the Premier made the statement of this task force and this tax idea, what was your involvement in the development of this trial balloon?

Hon. Mr. Elston: I do not think there was any development from the standpoint of it having been developed as a policy or anything else that you people seem to want to indicate. It is quite clear that what had been suggested during discussions with people in the field of health on any number of occasions is that we should consider certain things. One of the things suggested was that one. It is quite clear that the Premier is not happy with that option and people in general are not happy with it.

What has to be well known and well understood is that, whenever there are changes being made or contemplated with respect to health care, those changes will have to be measured against the firm commitment to the policies of accessibility and universality that the Liberal Party has. I cannot underline too strongly that, if we receive input and advice from whatever sector, they have to measure up against those very firm criteria, those very firm policy positions of this party.

Mr. D. S. Cooke: Back to the question: When were you consulted by the Premier about this idea of a tax and a task force? Let us leave it specifically at the tax. When did the Premier talk to you about this proposal for a tax?

Hon. Mr. Elston: I have made it very clear that these are things that have been suggested at one time or another by a number of people. There is no policy that has been developed or otherwise. It was a suggestion for some analysis. These items were never developed. If they were to be discussed, it would be in whatever context a study group might want. As I have made quite

clear, any recommendations made by any group at any time to this government will be analysed and measured against our firm commitment to accessibility and universality. You know that and I know that. That is the situation.

Mr. D. S. Cooke: The Premier made these comments on March 28. From what you are saying, he did not talk to you about the tax idea before that and he did not advise you that he was going to make these comments. Is that correct?

Hon. Mr. Elston: I do not quite understand what you are trying to indicate. It is quite clear that the idea of a tax has been around for a long time. I do not know exactly where or when it first arose. I have no idea to whom it should be attributed, as far as that goes.

It is quite clear that any number of people who have been in the health care field and have been interested in health care have heard about any number of different programs that people would like to have analysed. It was a reference to some of those ideas, and I do not think it is quite relevant to ask that I clear all statements by the Premier.

2:20 p.m.

Mr. D. S. Cooke: The relevance is that you are Minister of Health and a major statement was made by the Premier on March 28 which has caused all sorts of difficulties in this committee. The debate on whether we proceed with Bill 94 has caused all sorts of problems. You are indicating this afternoon to the committee that you were not informed by the Premier that these provocative statements were going to be made on March 28.

Hon. Mr. Elston: I do not think it was a major statement. Quite honestly, it was an indication that this government is looking into having committees that will examine all kinds of opportunities. It is clear that the Premier of this province can indicate that there is an openness to examining health care in its broadest form; but it is also quite clear that he as Premier and I as Minister of Health have a responsibility to measure any sort of recommendations.

It is quite clear that this is not the policy of this party or of this government. It is quite clear that any adoption of any program or recommendation or suggestion to us from anyone in the province will be made on the basis of how it fits into our adopted policy of accessibility and universality. You know that and I know that. The Premier made it very clear that this was not a policy of ours.

Mr. D. S. Cooke: I think the same person who wrote that speech named this act. It has about as much brilliance in it.

Hon. Mr. Elston: What speech?

Mr. D. S. Cooke: The comments that were made on March 28 and reported widely across this province. Did you discuss the comments that were made by the Premier in London with regard to medical manpower, and in particular the number of doctors in the province, with the Premier before he made those comments which have haunted the committee since they were made? Were you consulted on those comments?

Hon. Mr. Elston: It is quite clear that anyone analysing the situation with respect to providing services looks at manpower and it is quite

clear that the College of Physicians and Surgeons of Ontario, for instance, is interested in manpower. People are interested in manpower and how we provide services to our various publics.

Mr. D. S. Cooke: I am not wondering who is interested. I am wondering who is in charge of the Ministry of Health.

Hon. Mr. Elston: It is really an integral part of considering what the Ministry of Health is all about and how you provide services. It is a realistic analysis you have to go through.

Mr. D. S. Cooke: Before the Premier made those comments, were you aware that he was going to make comments about the number of doctors in Ontario?

Hon. Mr. Elston: It is always open to people to discuss questions of numbers of any group providing services to the public. It is quite open for anyone to proceed on that basis.

Mr. D. S. Cooke: In your own political way, the answer to both question has clearly been no, you were not consulted by the Premier.

Hon. Mr. Elston: David, it is quite clear that the Ministry of Health and the Minister of Health provide ample opportunity for the development of policy and suggestions. When people want to take a look at the broader questions, we are quite well able to provide the development of policy and mechanisms to analyse what is happening.

We are quite open to suggestions to be considered. People like to make suggestions to us and when those suggestions are made, we analyse them with respect to our very firm policy commitment. It is my role as Minister of Health to develop that policy, to make sure that policy is consistent with our already adopted and firm stand with respect of this bill or any other, and that is what I will continue to do. As Minister of Health I am doing that.

Mr. D. S. Cooke: What is the position of the Minister of Health with regard to the number of doctors in this province? Do you support the position that the Premier took that there are too many doctors in the province right now?

Hon. Mr. Elston: If that question were of some relevance here with respect to this bill, it would be fine to get into a discussion. I do not think that question has relevance to this piece of legislation. You are trying to cloud the issue. To be honest, I think you are trying to postpone the work on this bill by going off on other segments of health care.

Mr. D. S. Cooke: If your committee members had supported our motion, we would be debating clause-by-clause tomorrow, but you and the Office of the Premier gave orders to your members to vote against dealing with Bill 94 clause-by-clause starting tomorrow. You know that to be the fact and I know that to be the fact. I want to ask--

Hon. Mr. Elston: Mr. Cooke, you have an errant sense about how you interpret--

Mr. D. S. Cooke: It is a matter of fact.

Mr. Jackson: But the answer is not any different, Mr. Cooke. The

orders have come from the Office of the Premier (Mr. Peterson), not from the minister's office.

Mr. D. S. Cooke: I would like to ask the minister exactly what his position is on medical manpower in this province. This committee has been dealing day in and day out with presentations from doctors suggesting that the comments the Premier made were about some next action the government would take after Bill 94 was dealt with, which has impacted very much on the deliberations of this committee.

Hon. Mr. Elston: Perhaps you want to put it in that context. It is quite clear that is not taking place. There is nothing in this legislation that deals with that question. You know that, and the members of this committee know that.

I have made it quite clear that the only next step with respect to what we need to do after Bill 94 is to put in place the mechanism to determine how we come up with physician compensation packages. That is quite clearly provided for under section 3 of this legislation, and it is quite clear that we will want to sit down and work to set up that mechanism.

You know that, and I know that. That is the next step after this piece of legislation. We are not like past administrations, where there was some cynicism about the way government operated as a result of things it did or failed to do. We are a different government, and that is where we are at.

Mr. Davis: The Premier runs it all.

Mr. D. S. Cooke: The member for Scarborough Centre makes the point that the Premier does it all. After reviewing the presentations that have been made before this committee and getting reports back from his parliamentary assistant, does the minister not agree that comments made by the Premier with regard both to the tax scheme and the number of doctors in this province have made the issue of banning extra billing much more difficult to deal with for members of the committee and for you, as Minister of Health?

Hon. Mr. Elston: It is quite clear that in terms of coming up with answers to any problems, the answers themselves are not always easy to arrive at. If you think--and I hope you do not--everything is easy just because you will it that way, you are mistaken. You are a veteran of this thing, and you know very well that things are difficult to accomplish.

Mr. D. S. Cooke: That is not the question.

Hon. Mr. Elston: Health care is a complex issue. There are many questions we have to deal with in this bill, which we want to deal with and get behind us so we can get on with other very important questions. We would like to assemble any number of people to help us work on those things.

As the political leader of this province, the Premier is able and should, quite rightly, share the responsibilities and problems which face us all, not only the Minister of Health but also the Treasurer and Minister of Revenue (Mr. Nixon)--all of us as taxpayers. To be quite honest, I think it is correct that we, as a political party and as a government, share some of the challenges which will face us down the years.

Mr. Jackson: Mr. Chairman, on a point of order: Before we proceed any longer with the type of answers we are getting and the time that has been

allocated, I believe every member of this committee came to this meeting today with the full understanding that the Minister of Health would give a presentation to this committee to explain the exact status and the current terms of reference for the Premier's task force.

Hon. Mr. Elston: I did. You were not here.

Mr. Jackson: I was here. I heard. I wish you would answer in as complete and full a form as you are trying to dippy doodle with your last question. Since I am on a point of order, Mr. Chairman--

Mr. Chairman: Which we are still waiting to hear, yes.

Mr. Jackson: We were also led to believe the Ministry of Health staff would be here. Since the Minister of Health may be having difficulty answering some of the questions, it is absolutely imperative that the deputy minister be in attendance to respond to questions as well. I thought we were going to get a full presentation, and that there would then be a process of examination and cross-examination.

Mr. Chairman: No. You might have expected or hoped you would get something, a presentation in writing or whatever, but all we had was a commitment from the minister to appear to discuss these matters with us. In a sense, because we are dealing with political matters and we are hearing that they are in very early stages in terms of any formulations, it is probably inappropriate to have the deputy here for that. It is not yet at the bureaucratic level, if I can put it that way. It seems hard to hold discussions if there is still no committee formed and no terms of reference established or any time lines at this stage.

What you are getting instead of a written statement, which is one approach the minister could take, is his availability to go through this type of an examination. We have a lot of time to do it in.

Mr. D. S. Cooke: Could I just finish? I want to ask one other question.

2:30 p.m.

Mr. Chairman: I can believe you can do one more, then we will move on. We can always come back. There is no limitation to the number of times you can be on the speakers' list.

Mr. D. S. Cooke: I want to get a better understanding from the minister of what this task force is all about, what input he wants from this committee and whether the minister would be prepared to table something in the legislature. The appropriate way to go would be some kind of motion in the legislature that would be referred to this committee. Can you help us with a better understanding of what the Premier was talking about with this task force? Without the exact wording, what kinds of terms of reference were you looking at as Minister of Health?

Hon. Mr. Elston: It is quite clear the terms of reference were never set. I think that when you take a look at it--

Mr. D. S. Cooke: I know they were not set. I want to know where you are coming from and what kinds of input you want, not from this committee but from the task force.

Hon. Mr. Elston: It is quite clear and you have heard from one of the people who was involved in some of the discussions. It was at a stage where you sit down and take a look at who might be on the committee, what in fact might be examined and what might be the independence or how you set up that mechanism to study any number of problems in any number of areas. There had been no limitation of discussion. There had been no development of parameters for the study. It is quite clear that it was a very early discussion we were having about possibilities that would remain for us to set up this review.

Mr. D. S. Cooke: I will come back. It certainly was wide open.

Hon. Mr. Elston: Well, it was in its early stages.

Mr. Chairman: Was this the task force of which Mr. Evans was the chair?

Hon. Mr. Elston: There was no chair.

Mr. Chairman: This is another task force.

Mr. Reville: It is a chair-in-waiting. It is a new position the government has created--a task force-in-waiting, a chair-in-waiting.

Mr. Ward: As a point of clarification, Mr. Chairman, and perhaps you can answer it, my understanding in terms of now we ordered our business was that we would respond to the invitation by the Premier to have input with regards to proposing or suggesting things we would like to see in terms of reference for a task force that is to be struck at some future date. As yet, I have not seen any of the discussion relate to that. That was number one. Number two--if you will pardon me, I am a novice here--my understanding is that the manner in which committee terms of reference are established is through negotiation and discussion with the House leaders.

First, could you clarify for me the appropriateness of this committee to even consider expanding its role without having gone through the negotiations with the House leaders? Second, could you also explain to me this committee's right to do that, given the fact that the Legislature has struck a select committee on health care, which has yet to meet but whose members have been named? I just do not see how any of these little games that are being played around here relate at all to the task that is at hand for this committee.

Mr. Chairman: The motion was put, you may recall, and passed by the committee. It has the choice to do that--move motions of procedure and how it is going to operate. What it wanted to do was get input from the minister or Premier or both around the nature of the task force and what kind of role was seen for the committee in the establishment of the task force, but more than that to talk a bit about some of the other issues that had been raised while we have been here but outside of the committee, primarily by the Premier in terms of whether we should be expanding our terms of reference around Bill 94.

There are limitations on what we can do with that, it is true, but it is quite possible for the committee to decide that it will expand its terms of reference of what it will talk about and listen to here. When it does that, however, it may not be in a position to report anything to the Legislature because it has no specific mandate. Under Bill 30, for instance, we expanded our mandate to deal with superannuation as an issue issuing from Bill 30, but we had no capacity to put that into our report to the Legislature, so we had letters written to the various ministers.

We can pass a motion from this requesting the House leaders to meet and at their next meeting discuss our future role, with a recommendation that the committee be allowed to look at such and such and so and so. There has even been one past precedent where a committee asked for that kind of permission, did not receive it, and still decided to look at the issue even though it had no capacity to report back.

We are operating in a fashion that is quite within our terms of reference. We may determine after today that we wish to go no further at this stage with matters that are larger than Bill 94 on health care. We will wait for more information from the Premier, minister or the House leaders as to what they would like from us; or we may decide that we would like to do more.

Just to finish up, there is a select committee on the privatization and commercialization of health care and therefore has different parameters than one would presume the task force will have; that committee has not yet met either. Essentially we were here for information gathering and for discussion of the committee to decide whether it wants to do more around expanding our terms of reference.

Mr. Ward: It would seem that the issue before us is relatively simple, if I can ignore your preamble and just stick to your five-second conclusion there.

Mr. Chairman: You wanted to know what was possible that is why I had to give you all that.

Mr. Ward: It would seem that the Premier has served notice of his interest in any suggestions we want to make that relate to a task force that has yet to be established, and its terms of reference that have yet to be established. If we want to offer any suggestions in that process at the ground floor level, then so be it. I think the matters have been clarified in that there is no task force established as yet; there are no terms of reference clearly defined as yet; and either we accept the invitation to input in that process or we ignore it. Surely it is the prerogative of any government to strike a task force to examine any issue. My god, the Tories strike one once a week.

Mr. Davis: We know what we are doing.

Mr. Ward: I suggest that might not be the case. In terms of trial balloons, Gina Brannan has been a trial balloon week-in week-out for the past six weeks. Really, I do think that the issue is fairly simple.

Mr. Chairman: You may discuss that issue any time you would like; at the moment we are mostly talking about procedure. Was there anything further you wanted on that.

Mr. Ward: I think we should deal with whether we want to offer suggestions with regard to the task force.

Mr. Chairman: That is exactly what I am hoping to hear about sometime.

Mr. Davis: I have a personal point of clarification. It is my belief and understanding that Dr. Jim Henderson made a report to this committee. I was talking to Dr. Stephenson this morning and to her knowledge she has not seen that report. Would I be correct in stating that Dr. Henderson made a report?

Mr. Chairman: Submission.

Mr. Davis: Did you get copies of the submission?

Mr. Chairman: I recall getting a copy of the submission from Dr. Henderson; do other members recall getting that? If not, we can check on that to see. Do you remember--

Mr. Davis: The only reason I ask that is that I understood the commission hearings ended this afternoon or this morning. It was my understanding that Dr. Henderson indicated that he would be willing to come before this committee, if we wanted to ask him some questions. My colleagues, those to whom I have talked, have not seen that submission. I would like to know where it is and what is happening with it.

Mr. Chairman: I will see if I can dig up a copy of it and get it around to people again. I presumed it had been done. It is still possible to receive written submissions at this point; they are not closed off even at this point. I would be glad to circulate that to you again. We will find out what happened to it. I know I got a copy and I gather some members got it.

Mr. Davis: Maybe everyone did not then.

Mr. Chairman: It sounds like it has gone astray.

Mr. Davis: If my information is correct, if it is wish of the committee, would it be possible to request Dr. Henderson to come before us?

Mr. Chairman: Sure. We can have a motion to that effect, if we wish. Let us leave that, if we might. I would suggest motions might be best left until we had some further discussion and questioning of the minister to find out--

2:40 p.m.

Mr. Davis: The only reason I raised it, Mr. Chairman, was I understood there was a memorandum that came with it. I do not know if that went to committee members as well. It indicated that he would be prepared to entertain an invitation by this committee. I find it strange that it went astray.

Mr. Chairman: There are stranger things done 'neath the midnight sun.

Mr. Davis: It is interesting to me that my colleagues in the Conservative Party do not have a copy.

Mr. Chairman: It is interesting, I agree.

Mr. Jackson: More than you have dreamed of even in your philosophy, Horatio.

What is the recent response from the Premier in terms of our second motion requesting his appearance?

Mr. Chairman: No response.

Mr. Jackson: Did we use Canada Post, or was it delivered to his office?

Mr. Chairman: Hand delivered.

Mr. Jackson: It was hand delivered? When?

Clerk of the Committee: It was the week of April 1.

Mr. Chairman: It was done the day following the new motion being put.

Mr. Jackson: To date you have received no phone call or letter from the Premier in response to the committee's invitation?

Interjection: Is the minister aware of it?

Mr. Jackson: Is the minister aware that the Premier has not responded to the committee?

Hon. Mr. Elston: I was not aware.

Mr. Jackson: Are you here then in any capacity representing the Premier on the basis of the questions raised?

Hon. Mr. Elston: I was here to report on the status of the task force on which you had written an earlier piece of correspondence and I quite clearly indicated that the task force is not in existence; there are no members, there is no term of reference set and that is where it stands.

Mr. Jackson: In any conversation with the Premier since his Kitchener statement has he indicated to you, if he is unwilling to attend, that you would be there to clarify these points on his behalf?

Hon. Mr. Elston: It is quite clear that I am here to speak to you about anticipated establishment of a task force. What also is quite clear is that the Premier had hoped that when I was here today that you would provide me with some direction as to the style of questions that you as a committee, having sat through some deliberations and public presentations, might want to be considered by any group that was set in motion to study the health care system.

I am here to receive your input, and from my standpoint that is my primary objective for being here, so that I can communicate to the Premier that you have some degree of interest in participating in helping to set a framework in which terms of reference of any committee might be developed.

Mr. Jackson: So you are not here--

Mr. Reville: He is so here.

Mr. Chairman: It is quite clear that he is here.

Mr. Jackson: You are only here in your capacity as the Minister of Health. You are not here to respond in any way to the committee's request.

Hon. Mr. Elston: I am here as the Minister of Health and to speak to you specifically about a task force about which you wanted to hear and I have made the point quite clearly that I am also here in my capacity as representative of our government to receive any suggestions this committee may wish to send back with me. I am here to listen to you.

Mr. Jackson: You made the reference earlier today to ideas generated by the Premier. Are you able or not to respond to the statements made by the Premier?

Hon. Mr. Elston: I have responded with respect to this task force. That is what I am here about.

Mr. Jackson: If you are going to respond with respect to the task force, you were present in the room when Dr. Hugh Scully responded to an extensive line of questioning about meetings that were convened at the request of the Premier, to which you were invited with the Deputy Minister of Health and several others, to discuss this task force. This was in the fall, I was told, somewhere in October or September. It could have been August, but I think it was September. Can you clarify approximately the month in which that meeting occurred?

Hon. Mr. Elston: I do not think that would be of any real assistance to us. I can tell you that there were several meetings that took place among any number of people. I am not sure that the timing is of particular importance.

Mr. Jackson: Dr. Scully made specific reference to two meetings. There were two full meetings to discuss the task force to which the Ontario Medical Association was invited by the Premier. You were invited as the minister of Health to listen to the Premier's plans. There were two meetings that were specifically called for that reason.

Hon. Mr. Elston: I am not sure there were not more meetings than that.

Mr. Jackson: There possibly were more than two, but there were definitely more than one.

Hon. Mr. Elston: I have attended any number of meetings where we have sat down with people who wished us to do more to plan the health care system.

Mr. Jackson: Dr. Scully made reference to the fact that the task force the Premier was drafting in his mind and putting on the table for consideration at that time included membership from the OMA. Is that your recollection of one idea or one plank for this task force?

Hon. Mr. Elston: It is quite clear that Dr. Scully was a member of the group that was sitting and discussing it. He is well recognized as a representative of the OMA.

Mr. Jackson: Was there not also agreement in general terms that the doctors would have only one member on a possible task force, that there would be representatives from consumer groups, the hospital association and the nursing profession and that the doctors would not in any way hold a majority of membership on this task force?

Hon. Mr. Elston: I think it is quite clear that in some preliminary deliberations on membership we wanted to make sure we had a very broad and representative group from all segments of the population in Ontario, from people who know health care and who are interested in it. There was no finalization of the membership.

Mr. Jackson: I did not say there was finalization. You concur that a framework was discussed, that it was not necessarily finalized, but it was discussed in terms of membership and that this was one of the early aspects of that discussion. That concurs with other testimony and other comments we have had.

Hon. Mr. Elston: There were discussions about membership.

Mr. Jackson: Do you concur that this task force was to have a six-month time-line to report to the Premier?

Hon. Mr. Elston: No. From my standpoint, I do not feel there was any particular time frame. I do not think we were specifically into that particular thing from our standpoint.

Mr. Jackson: Are we not led to believe that the Premier--

Hon. Mr. Elston: Just a second. I am sorry. I have to finish. There were terms of reference to be worked out. There were several things that had to be finalized. I find it very difficult to put into a concept how a committee can report in a particular time frame if the terms of reference have not been struck. That is all. It was very preliminary, Mr. Jackson, and I do not think it is possible to set time-lines until we know exactly what is being reviewed.

Mr. Jackson: Fair enough. The point is that questions were raised in these two meetings as to whether you were looking at a two-year, a one-year, a six-month, an eight-year, a 20-year or a 42-year--my point is that generally it was the view that the Premier's agenda was one in which it would be in the order of less than one year.

Hon. Mr. Elston: I am not sure that can be quite clear, because the terms of reference were not set.

Mr. Jackson: You have a different understanding on that point. Was it understood that there was something of an understanding, but it was not final, that Dr. Hugh Scully would be the representative for the OMA?

Hon. Mr. Elston: I think that is unfair. Dr. Scully's involvement would be very important to the discussions if a committee were put in place. Obviously he is a very capable individual. With respect to having a group of people available for a committee, there are any number of possibilities of people who might represent any number of interests. Our interest in setting up any task force would be to make sure we have the broadest possible representative group, people who were well respected.

Mr. Jackson: On the terms of reference, Dr. Scully indicated there was some general discussion about key issues affecting health care today and in the foreseeable future, and that in the course of the two or maybe more meetings there was general discussion about the terms of reference. Do you concur?

Hon. Mr. Elston: I do not know for sure in that sense. We talked around various of the problems of the same concepts.

Mr. Jackson: What you would be looking into.

2:50 p.m.

Hon. Mr. Elston: Quite honestly, what was being looked at was the many series of discussions that might be held by a committee, but certainly not in terms of setting any basis for the terms of reference. It is quite clear that those were not being established and had not been established.

Mr. Jackson: I did not say "yet established." There were discussions around this issue, which is different from having terms of reference set, finalized or even in full focus.

Hon. Mr. Elston: We had discussions about an examination of the health care system.

Mr. Jackson: I am led by statements in the media to believe that one of those items is access to certain insured services and to current services that are not insured. Is it a fair statement that this issue was raised during the course of those discussions, as introduced by the Ministry of Health?

Hon. Mr. Elston: I did not introduce those.

Mr. Jackson: Not you; the Ministry of Health.

Hon. Mr. Elston: The Ministry of Health?

Mr. Jackson: Dr. Dyer and possibly the Premier (Mr. Peterson) in terms of previously uninsured services.

Hon. Mr. Elston: I do not think I can recall specifically any particular piece of information that was firmly deliberated upon. We were sitting down and speaking about any number of items. I do not specifically recall this.

Mr. Jackson: Dr. Scully's recollection is far clearer. He indicates that during the course of these two-plus-whatever number of meetings, there was discussion in the presence of the Premier on matters relevant to insured and uninsured services and access. Do you not have a recollection that these matters were discussed?

Hon. Mr. Elston: I think it is quite clear that when you are talking about health care, you cannot get away from access. Quite clearly, our government policy and position is that all programs and all task force recommendations, whoever has made suggestions to us, are going to have to live up under the tests of accessibility and universality that we hold as a prime part of our health care programs. I would find it quite understandable that those words would be there and that the tests would be available for us.

Mr. Jackson: Do you agree with or deny the statement that the Ontario Medical Association expressed interest in making the issue of Bill 94 part of the task force's terms of reference?

Hon. Mr. Elston: The OMA made that suggestion some time ago.

Mr. Jackson: Was there a complete rejection on the part of the Premier as a term of reference for the committee?

Hon. Mr. Elston: I do not think that is particularly relevant since there was no deliberation of the terms of reference for this task force.

Mr. Jackson: We have established that there were.

Hon. Mr. Elston: What? That there were terms of reference?

Mr. Jackson: Parameters.

Hon. Mr. Elston: There are no terms of reference for this committee. There is no committee. Mr. Jackson, I am sorry, but if there is no committee and there are no terms of reference, how can you establish parameters?

Mr. Jackson: Because you have exploratory discussions.

Hon. Mr. Elston: I can tell you the basis on which a task force could be set up. I am sorry, but there is no committee.

Mr. Jackson: We know there is no committee. I asked you a direct question. Did the Premier reject completely and out of hand any effort possibly to resolve this dispute by putting the issue of extra billing into the terms of reference of a task force that you were developing or having exploratory discussions to develop six or seven months ago?

Hon. Mr. Elston: I cannot comment.

Mr. Jackson: It is very important to the work of this committee and to the citizens of this province if there were an opportunity for the Premier to have avoided the confrontation by putting this whole issue within the context of that task force. I am sorry, but there is sufficient dialogue in the community to lead us to believe he had an opportunity, and you as Minister of Health had an opportunity, to put that together to avoid the conflict and upset that has occurred in this province. I will ask you again. Did the Premier, out of hand--

Hon. Mr. Elston: It is quite clear that the task force was not available to us. The committee itself was not established. The task force was not established. When you are in these very basic, preliminary stages and people decide not to participate in certain further developmental steps, it is impossible to carry on with work when nothing is in place. Quite honestly, there was no committee. The guidelines were not there for them. to be quite honest, if we had continued participation, something might have developed. There was no continued participation in setting out how we might deliberate and come to grips with membership, topics to be discussed and whatever. Before you can come to grips with the topics to be discussed, you quite clearly have to have some idea of your membership. There was no--

Mr. Jackson: Membership is not the issue.

Hon. Mr. Elston: Membership is very important to us. It is quite clear.

Mr. Reville: Look at the date on the letter, Mr. Jackson. It should give you an idea. It is April 1.

Mr. Jackson: The whole point of this issue is the Premier had called a task force to discuss a wide range of health care issues.

Hon. Mr. Elston: It has not been established.

Mr. Jackson: He called a meeting.

Hon. Mr. Elston: There is no question that we have had meetings. We

were quite pleased with the progress in those meetings to try and come to grips with what we might have in terms of membership.

Mr. Jackson: That is a matter of interpretation. I do not think the citizens of this province can be too pleased with the progress of those committees if we have the QMA attending these meetings telling us that it was ready, willing and able to discuss a variety of issues, including the whole matter of extra billing, before a committee at the invitation of the Premier of this province. For whatever reason, those discussions broke down. The chosen route of the Premier of this province was to take this province and this government down a path of confrontation.

I am merely asking you the question why you did not intercede and why you did not foresee and seize an opportunity such as that of six months ago to put this matter in a way in which a resolution could have been found without the confrontation that has resulted. You have admitted publicly that the confrontation is inappropriate and unfortunate and that you are not happy about it. That is very clear. I am suggesting that you had an opportunity, albeit in the presence of the Premier who had final say in health care matters, and that you could have resolved it six months ago.

I have a question with respect to the presentation of this bill in the Legislature, if I can deviate to that.

Mr. Reville: Nothing stopped you before.

Mr. Jackson: Nothing stopped me before. In the presentation in the House, you made reference to the fact that the Health Care Accessibility Act had considerable financial implications with the Canada Health Act holdback. Through some sort of evolution it became an access bill. I am trying to determine now after all this debate--

Hon. Mr. Elston: It always has been an access bill.

Mr. Jackson: If it has always been an access bill, will you please tell me where in the bill you are expanding insured services?

Hon. Mr. Elston: It is quite clear that for the purposes of those people who are unable to receive the assistance of particular specialities, they now will be able to access them on an insured basis without having to have their billfolds examined.

Mr. Jackson: In the House and before this committee on the first day of hearings, you made far-reaching and all-encompassing statements about having a publicly financed, publicly administered system, with a universal range of services accessible to everyone. You led the Legislature to believe that you were looking at expanding services beyond the services that are currently insured under OHIP.

Hon. Mr. Elston: We certainly expanded our public funding of services. There is no question about that. Even now several series of programs have provided us with better access.

Mr. Jackson: I am talking about senior citizens who are paying a fee for a podiatrist and senior citizens who are paying for access to a chiropractor.

Hon. Mr. Elston: Those are programs your government put in place. I

cannot comment on historical deficiencies that you now may want to relate.

Mr. Jackson: You set yourself up as the great reformer, not the great confrontationalist.

Hon. Mr. Elston: Your recent analysis of your past experiences are a ringing condemnation of where you guys have been in the past 10 or 12 years. I cannot help that.

Mr. Jackson: If you want to dwell on the past, that is fine, but we have a bill to deal with.

Hon. Mr. Elston: I am in the future and I am in the present and I have to deal with the deficiencies that you and your predecessors left over.

Mr. Jackson: Let me ask the question simply. You have stated this is a bill about access. Where does this provide further access to the citizens of this province for services that currently are not insurable?

3 p.m.

Hon. Mr. Elston: It does not talk about uninsured services. It talks about people having access to those services that are insured at insured rates, rather than being punished by some people with respect to adding charges on top of those insured services. That is quite clearly what this is about and I think you will have to read it from that standpoint. Quite honestly, what is happening now is people are being deterred from accessing the insured services that are already in existence.

That is the case. We have all kinds of correspondence indicating that. We had members of the College of Family Physicians of Canada who came here and said they believe people are being deterred from using insured services by those extra charges. I can agree with that analysis. This bill insures that people will have access to insured services without having to pay an extra charge on top of it. That is the accessibility of this piece of legislation. It sets the basis for us to do any number of other things.

Mr. Chairman: Mr. Jackson, can I come--

Mr. Jackson: I have a final question and then I will yield, but I would like to come back. You agree that the bill in no way addresses the fact that in this province--

Hon. Mr. Elston: It does address the fact of accessibility.

Mr. Jackson: Hear my question. In no way does this bill address the issue of seniors having to pay added bills to see a podiatrist or chiropractor in some circumstances, or for some elective surgery or to obtain additional lab work. I understand your government has put a ceiling on certain numbers for lab work.

Hon. Mr. Elston: Your government did.

Mr. Jackson: You are continuing with that approach.

Mr. Chairman: Terrible approach.

Mr. Jackson: Terrible approach.

Hon. Mr. Elston: Your government historically did all those things. We have to work with what we have.

Mr. Jackson: Mr. Elston, you can answer the question. This bill in no way addresses additional financial costs and access for those citizens.

Hon. Mr. Elston: It does not for a podiatrist, but it makes sure that you do not have to pay extra for the insured services.

Mr. Jackson: I can read the bill. In no way does it improve access.

Hon. Mr. Elston: So you admit it does deal with accessibility. Thank you.

Mr. Chairman: Now that you both understand each other, why do we not move on? I have a couple of pieces of information. I have circulated the Premier's letter to us of April 1, as was noted by Mr. Reville. The second to last paragraph is the important one. I replied to the Premier in the second letter. You should all have the exhibit by Dr. Henderson. It was exhibit 25, filed on March 17 and received in the office of the Clerk on March 10. We have extra copies of it for anybody who wants it, but it was filed as an exhibit before the committee and labelled as exhibit 25. Originally, copies went to the Liberal members of the committee as well. It was distributed as an exhibit.

Mr. Ward: I would like one more clarification because we seem to keep getting away from responding to the invitation to provide that input. Can the committee, if it desires, refer this issue to the House leaders to look at it perhaps in conjunction with the role of the select committee on health care services?

Mr. Chairman: Yes.

Mr. Ward: I am not making a motion, but I offer it as a suggestion. It is obvious that the opposition is not in any position to make any concrete suggestions in response to that letter. Some of the issues that we have talked about are very interesting.

Going back to the first day of hearings, you will remember that Mr. Grossman was here and gave an opening statement, at which time he touched on some other issues that he felt there was a pressing need to address, one of which was physician manpower planning. Since that time, the four leaders of the opposition-in-waiting have distanced themselves totally from that position. Obviously, they are not prepared to comment on that. They will not have a position on any of these other matters until the Grossman commission, which Mr. Andrewes chairs, has finished its deliberations. I wonder whether all this consideration is premature, seeing that the only position they have taken in the past couple of weeks is that they screwed up care for the elderly for the past five years or so. I wonder whether we should put this off to the House leaders.

Mr. Reville: On a point of politics, Mr. Chairman.

Mr. Chairman: Your question was, is it possible? The answer is, "Yes, it is possible for us to do that." It is one of the things we might do.

Mr. Davis has left.

Mr. Reville: I thought I would take his place.

Mr. Chairman: Mr. Bernier and then I will give people first shot before we come back to you, Mr. Jackson.

Mr. Bernier: Do you want me to speak now? I will change the subject for a brief moment and refer to the manpower issue. We have heard considerable talk about manpower requirements. We heard the Premier make the comment about manpower. We have heard a considerable amount of discussion with regard to accessibility. I want to point out that in the briefs we have heard, particularly those from northern Ontario, and I refer to Thunder Bay where we have something like 250 doctors and six doctors are opted out--in that vast area from Thunder Bay to the Manitoba border there are no opted-out doctors. There is a shortage, as you well know, of chronic care beds, extended care beds, acute care beds. Modern, technical facilities or healing facilities in the north are in short supply, as are specialists. In some instances, physicians are in short supply in northern Ontario. If there is an accessibility problem, it lies in those particular fields with regard to the facilities and the needed manpower.

We have an excellent program, as I think you will agree, where we assist those doctors in going north to the tune of \$10,000 a year for the first four years. I do not know what the total budget of that is, but it seems to be working. When Dr. Copeman can get a new doctor or a new graduate to look north, we assist him financially to move and in some instances he moves, but there is still a need, as I think you will agree.

The recent reports in the Toronto press bother me. As I understand it, we have a number of newcomer doctors, who have come to this province as doctors, who have taken certain examinations and tests and are now qualified, yet they cannot accept a position or obtain a position because of the lack of internships in some hospitals. The point they are making to me is, why can some of the funds used to attract doctors into northern Ontario not be channelled into hospitals and provide more internship so they would move into northern Ontario? They are willing to go to northern Ontario if that incentive is provided.

I know you have a cap on internships across this province. This morning we heard from one of the doctors, who said some hospitals in southern Ontario lack internship. I wonder where we stand with regard to that need and to answering that requirement. We have professionals digging ditches who should be looking after the health of people in northern Ontario.

Hon. Mr. Elston: Mr. Bernier has probably come up with a good suggestion in terms of a study for the task force. I will accept that and take it back with a recommendation, if you wish. You know as well as I do that there are some programs in northern Ontario designed to attract people which have worked to some extent. One of the things we are doing, in addition to that, is making provision to put some extra equipment into some of those facilities. This will also help.

Mr. Bernier, it is quite clear that you cannot necessarily expect well-trained people to stay only on the basis of some financial incentives. It helps to attract them, but you also have to put in place the capital structure or the mechanism that allows them to practise in a way in which they have been trained, and that is with good equipment. We are working at that as well to improve accessibility. Quite honestly, I can commend previous administrations for looking at providing some financial incentive. We have added some components which will help hospitals put in some extra equipment, which goes hand in hand with those incentives.

I have no problem in commending previous decisions on those bases. If you think we should commend that to a task force that the Premier is setting up with assistance from the Ministry of Health, then I will certainly take that back and say, "let us look at that as a part of our health care planning for the future." It is a good suggestion; it is the first one I have had.

Mr. Bernier: To take that one step further, you were here when I discussed this with the OMA. It relates to my experience with Lakehead University and our efforts to obtain a faculty of forestry. After some considerable amount of negotiations, we were able to get a faculty of forestry in the right part of northern Ontario.

Hon. Mr. Elston: Is that as opposed to being in Sudbury or Timmins?

3:10 p.m.

Mr. Bernier: I think there are more pleased in Thunder Bay than in Sudbury. Now we are seeing more special people remain in northern Ontario because they have been taught there, trained there and are accustomed to the climate, the quality of life and the way of living, and they remain in northern Ontario.

I was pleased when the OMA supported my suggestion that maybe some medical teaching components could be attached to Lakehead University or Laurentian University to encourage those people, at least in the final years of teaching, to go to northern Ontario to learn what the climate and the quality of life are like, and possibly some will remain there. Will you consider this part of that task force's study?

Hon. Mr. Elston: I can make the suggestion that they take a look at medical needs in northern Ontario in general.

Mr. Bernier: Do not make it too general. Be a little specific.

Hon. Mr. Elston: When you start looking at it, it requires co-ordination among colleges and universities and others. That is a recommendation you have submitted to me to consider. I am not sure whether I can consider that as an endorsement endorsed by the committee per se, but I can take notice of that.

Mr. Bernier: There are not too many northerners on this committee. I am outnumbered.

Mr. Chairman: In the informal sense of picking up information, you have received that.

Hon. Mr. Elston: Yes. I will receive that. I will put it as having come out of this session, but not necessarily as having been formally designated as a committee suggestion.

Mr. Davis: I know you discussed this with Mr. Cooke in the opening, but I want to refer it to you again. I also read very well, so I know it is not in Bill 94. There have been statements by the Premier, which I want you to clarify. If they are not your intention today, will they be your intention tomorrow? This is with specific reference to the capping of the number of doctors and his statement on the radio in which, I guess, for want of better words he was talking about a tax for the sick. Can you give assurance to this committee that they will not be the policies or the

directions you will follow as Minister of Health in the next several months?

Hon. Mr. Elston: It is quite clear the Premier did not talk about capping--

Mr. Davis: I did not ask you about the Premier; I asked about you.

Hon. Mr. Elston: No. You talked about the Premier.

Mr. Davis: All right. Go ahead. Sorry.

Hon. Mr. Elston: It is quite clear the Premier did not talk about capping the number of doctors. He was talking about the availability of physicians. In this province we have registered about 1,400 new physicians in this past year. We will continue to examine the needs of the health care system. I do not intend with this bill or with the next step to do that type of capping. I think that is quite clear. I have said it quite honestly. People have tried to say this is something like Quebec or British Columbia, and I have been very clear that this is neither British Columbia nor Quebec. I am not moving down that same path.

Mr. Davis: It is not your intention to restrict the number of doctors in this province. It is not your intention now or in the future to restrict where they may set up their practices because of where you designate OHIP billing. It is not your intention at this point.

Hon. Mr. Elston: That is BC and that is not one of the policies we stand for. That is correct.

Mr. Jackson: Then you will not support any recommendation from any quarter to include that as the terms of reference of your task force.

Hon. Mr. Elston: Do you mean with regard to analysing where that is?

Mr. Jackson: Capitation and reallocation.

Hon. Mr. Elston: If people suggest that it should be studied, I cannot refuse people the opportunity of studying it. What I have clearly indicated is that any recommendation will be weighed heavily against our concern for universality and accessibility. I am not going to.

Mr. Jackson: You resolved all those problems with Bill 94. This is life after Bill 94 we are talking about.

Hon. Mr. Elston: No.

Mr. Jackson: It is in the media.

Hon. Mr. Elston: Just a minute now. Every program that we have to analyse is going to be done on the basis of those consistent policies, Mr. Jackson. I think you recognize that, as do I. However, with respect to what issues are going to be ultimately studied by a task force, the terms of reference of which are not yet final, I cannot commit what it is going to recommend. I cannot commit to you that somebody will not recommend something somewhere down the line. It is not our policy to cap doctors.

Mr. Jackson: What you are saying is you are not committed to the concept of capitation, but you will not interfere with anybody raising it. It

does not matter if they recommend it; this government will never implement it.

Hon. Mr. Elston: No. I cannot say that either, because--

Mr. Jackson: You used the word "honestly" when you said that--

Hon. Mr. Elston: Just a minute. We have programs now, Mr. Jackson, where there are communities that develop a capitation form of health care service. We have responded, and your government did as well.

Mr. Jackson: That is a different type of capitation. That is capitation on the number of patients.

Hon. Mr. Elston: You are talking about numbers.

Mr. Jackson: We are talking about saying to a community it will have a certain number of doctors.

Hon. Mr. Elston: That is not our policy.

Mr. Jackson: I have to ask you the question the media asked the Premier. Why are you including them in and why would you even consider them in the terms of reference if you have no intention of implementing them?

Hon. Mr. Elston: The consideration of a review of the health care system is obviously going to be as broad as we can have it so we can look at what is coming. That is a part of the situation. You analyse where you are at and what possibly may be coming, or whatever, and you take recommendations on the basis of the soundness of task force material, reports and information gathered.

Mr. Jackson: I am done with my supplementaries. I will go back to the speakers' list.

Mr. Davis: I would like to follow up on that. I understood the minister to say the task force will have the option. I understand that a minister certainly has the right to set out the areas that a task force will examine. What I hear you saying is that if they suggest to you that they should look at capping the number of doctors, at the allocation of doctors or at a sick tax, then you will say to them, "Go ahead and do it." At the same time, you are going to say to them, "You can look at it but we are not going to do it."

Mr. Ward: The question was asked in the absence of a task force.

Mr. Davis: No, I did not ask in the absence of a task force, Mr. Ward. In effect, what you are saying is, "Go ahead and do it but we are not going to do anything." That really means it is a waste of time and it is a mockery to go out there. All you as the Minister of Health have to say is, "I am prepared seriously to consider the recommendation of capping doctors, of putting a sick tax on this province and of allocation." The minute you say that then, in essence, you give credibility to the concern that comes before this committee of the various people who have said that Bill 94 is but the next step to that. They point to Quebec and British Columbia and they are validly and historically correct.

Hon. Mr. Elston: It is quite clear that I have indicated here that we are not capping the number of doctors. It is quite clear that the Premier

has indicated in public and otherwise that he is not in favour of a sick tax, so called by you. I will say that is the situation.

Mr. Davis: Then would it not be fair or just to say they should not be the grounds for people go out and do their task force work on it since you are not going to look at the recommendations?

Mr. Chairman: It might be one of the recommendations you might like to make that the task force not look at them, Mr. Davis.

Hon. Mr. Elston: If that is the recommendation that you are making to me, I will take that back.

Mr. Davis: Back to whom?

Hon. Mr. Elston: Back to the Premier and the group of us who are sitting down and studying the task force and motions. It is not yet set. It is quite open for you to make suggestions.

Mr. Davis: You set them. That is your responsibility.

Hon. Mr. Elston: I am here because I was asked to come and receive your input.

Mr. Davis: That is not what I understood.

Mr. Jackson: You are here because the Premier will not be here.

Mr. Davis: You are the government, Mr. Ward, and sometimes you forget that.

Mr. Ward: What is your party's position on that?

Mr. Reville: At the risk of being excruciatingly boring, perhaps narrow-minded too, maybe there is a way we can give the minister the benefit of all the good information we have received over the 160 deputations.

Mr. Chairman: Copies of them.

Mr. Reville: We could just give it the pile of stuff, or we could suggest that all the deputations call the government on the phone.

Mr. Chairman: After 11 p.m.

Mr. Reville: My friend the parliamentary assistant over there points out that he is a novice, but he is being a bit disingenuous about the games that are going on here. He knows precisely what the games are. I would like to remind him that it was the Premier who suggested that we might offer some suggestions for this task force, which we now find out does not exist.

Mr. Ward: You are right. You are never boring.

Mr. Reville: What kind of a dumb idea is that to give suggestions to a task force that does not exist?

Mr. Jackson: Or that you will not listen to once they give you the recommendations. That is the one I love.

3:20 p.m.

Mr. Reville: I expect that if the task force does exist some day, it might be helpful to it to have some things to look at. I am very concerned that it will not be able to think of any on its own. It seems to me that a number of issues were raised. Mr. Bernier mentioned a couple of them. One of the issues that held a lot of interest for me when we were hearing from doctors was the question of funding for teaching and research, which doctors say are now being funded in part by the proceeds of extra billing, which seems to me a very random tax on select health care consumers that should be looked at. If we agree that teaching and research are important, and I am sure we all agree to that, then the way that is financed might be looked at. I suggest to you that is another area your task force might want to look at.

To be very practical, this committee has a great deal of business before it. There seems to me to be a number of ways in which good ideas about the health care system can flow through to the government's attention. One of them is clearly the work the Minister without Portfolio (Mr. Van Horne) is already doing on seniors. Another is the select committee on health care, which will obviously be generating ideas. Then there is always the capability of the government to set up a task force and inquire from whomever it wishes as to what it should be doing.

Mr. Jackson: Who thought up that committee?

Mr. Reville: I have no idea. The Premier talks to me about as much as he talks to the minister.

Hon. Mr. Elston: He talks to you less.

Mr. Reville: Perhaps less, perhaps more.

Hon. Mr. Elston: No, less.

Mr. Reville: I forget, less or more, one of the two.

The steering committee of this committee may want to look at a way for the notions of each of the caucuses to be collected and brought back to the committee at a later date when the business has been cleared away. We have bills 54 and 55. We hope to do clause by clause on Bill 94. We undoubtedly will do clause by clause on Bill 30, if ever the election gets over in York East.

Mr. Jackson: Thank you for recognizing that fact.

Mr. Reville: If the election ever gets over, we will be spared the indignity of watching Tory candidates depart from the policy of their party every other day.

Mr. Jackson: Your candidate does not have to because your whole party is on the verge of doing it.

Mr. Reville: Our whole party is in York East right now. It has no time to think about policy.

Mr. Jackson: Listen, I read the paper.

Mr. Chairman: Order. There were a number of points of politics there, none of which is in order.

Mr. Jackson: Narrow, but never boring.

Mr. Reville: I was making a point of politics in a speech, which I think is allowed.

Mr. Chairman: That is right, but it did provoke response.

Mr. Reville: Mine is actually a suggestion that I think may help the committee get on with its business, which is pressing and important. It is that the matter be referred to the steering committee and the representatives of each caucus on the steering committee assemble from each caucus its suggestions for input into the terms of reference of a potential task force that may or may not exist. Those ideas can then be brought back to a meeting of this committee some day in the future, preferably when I am not here.

Mr. Chairman: That was a suggestion; it was not a motion.

Mr. Reville: Should I have made a motion?

Mr. Chairman: It is a little late now.

Mr. Reville: I am a novice; I do not know how this works.

Mr. Chairman: Very ingenuously put.

Mr. Jackson, you had further points?

Mr. Jackson: Not points, questions for the minister. Why a \$10,000 fine? How did you come up with that?

Hon. Mr. Elston: Several things actually--are we getting into the bill now?

Mr. Chairman: It does not exactly strike me as what we are talking about today.

Hon. Mr. Elston: I can say there was an analysis of the Health Disciplines Act, which has a \$5,000 fine. It was set in motion some time in the early 1970s. There was an indication we might update the fine levels.

Mr. Jackson: What was the fine for at the \$5,000 level? Where does that come from?

Hon. Mr. Elston: It is the Health Disciplines Act, any number of items that all deal with professional misconduct.

Mr. Jackson: Can you give me an example of professional misconduct? I am from Burlington and that does not happen.

Mr. Chairman: Billing above the OMA rates?

Mr. Ward: One large one is about notifying about extra billing in advance.

Hon. Mr. Elston: As Mr. Ward says, failure to notify in advance of seeing a patient that there is extra billing involved is an item that is supposedly an item of professional misconduct, but it is quite clear from my discussions with the Ontario College of Physicians and Surgeons that anybody

who might be susceptible to a \$5,000 fine--I do not know the incidents by the way--would be involved in a very serious case of misconduct.

Mr. Jackson: Dr. Sheila Louisy from Burlington, a deputant this morning, raised the point that she thought the \$10,000 was punitive, given that in this province if you become intoxicated and drive, and even cause loss of life, you are faced with a \$2,000 fine.

Mr. Reville: You go to jail.

Mr. Reyecraft: Talk to your caucus about that.

Mr. Jackson: That was the point raised; you may go to jail. The person in the chair at the time attempted to clarify the implications. I am not a lawyer. Could you, being a lawyer, advise me as to what you foresee happening in the court system or what your Attorney General (Mr. Scott) has advised you would happen for the nonpayment of a \$10,000 fine?

Hon. Mr. Elston: I do not know what might happen for nonpayment; I am not anticipating people not paying.

Mr. Jackson: Let us say people adopt Gandhi's philosophy that if a law is invalid and if it is wrong, then one should defy it. One of the reactions may be to say, "I am not going to pay the \$10,000 fine." What do you envisage happening?

Hon. Mr. Elston: That is hypothetical.

Mr. Jackson: I am asking you, as a lawyer, to explain to me what happens in the court system. I need to know. Should we request this directly from the Attorney General? I would like to know what happens in Ontario to someone receiving a \$10,000 fine, let us say, under this act who refuses to make payment.

Hon. Mr. Elston: No one has refused to make payment under this act. They understand it is quite clear--

Mr. Jackson: You did not understand my question.

Hon. Mr. Elston: You are asking about another act.

Mr. Jackson: Can you, as a lawyer, not tell me how the court system works?

Hon. Mr. Elston: Under this legislation, it is quite clear that we have not put the mechanism in place. The mechanism is not here. If you are asking hypothetical questions, to be quite honest, I think it is clear--

Mr. Jackson: Is it a hypothetical question? I am asking what happens in Ontario when someone does not pay a \$10,000 fine in the general area in which this would find itself. I am not a lawyer and you are. Could you help enlighten me? Is this a civic matter? What level of the court is it?

Hon. Mr. Elston: Do you mean civil?

Mr. Jackson: It would be civil. We are making progress here.

Hon. Mr. Elston: You meant civil, as opposed to civic?

Mr. Jackson: I do not know.

Hon. Mr. Elston: It would probably be done under the auspices of the Provincial Offences Act.

Mr. Jackson: What are some other examples under the Provincial Offences Act? The example I used, is that one?

Hon. Mr. Elston: No, that is the Criminal Code.

Mr. Chairman: It is the other means, other than the Criminal Code.

Mr. Jackson: What other items fall within that court?

Hon. Mr. Elston: There could be Highway Traffic Act offences.

Mr. Jackson: Is there occasion under the Highway Traffic Act in this province when, for nonpayment of a fine at some level, the alternative is a jail term of some duration?

Hon. Mr. Elston: Yes. Sometimes, in addition, there is suspension of licence, for instance.

Mr. Jackson: A suspension of licence.

Hon. Mr. Elston: I have not suggested that is part of our legislation, however. I do not want you to get that idea.

Mr. Chairman: The difficulty I am having with this, if I might, is not that it is not legitimate for us to try to find this out as a committee, but to go back to the purpose for which we are here this afternoon, I have given lots of latitude, but we are here specifically to talk about the request of the Premier around the task force and an expanded role. We are now getting into the kind of debate that would probably take place either during clause-by-clause or when we had deputants here being questioned. I will try to find out for you what some of the ramifications of this matter might be, whether you actually need specific wording in the legislation as to what takes place or if there is some other law which it then falls under. I will try to find that out for you.

Mr. D. S. Cooke: The other appropriate way of doing it is, when we come to a particular point on clause-by-clause, to have legal staff here who can answer the question.

Mr. Chairman: Since it has been raised now, I will suggest that we have the information in advance. That would be the normal time to do this.

3:30 p.m.

Mr. Jackson: I have three more questions that have to do with the bill. I was led to believe we would have another opportunity to discuss this bill with the Minister of Health. It is not uncommon. The Minister of Education (Mr. Conway) has extended that courtesy from the beginning. There is a change and questions have been raised during the course of public hearings. The minister came in and gave a very broad statement about health care, with very few specifics about the bill and now he envisages it being implemented, and I think it would be fair to this Legislature--I stand corrected; I thought that was part of what we were doing this afternoon. I was trying to achieve

both. I would like clarification of what opportunity we will have to investigate the kinds of questions I have; I have several more along that line.

Mr. Chairman: The minister and his staff will be here during clause-by-clause, and any time you wish to raise a question, you should do so. I will also try to make sure we have sent out to all committee members the answers to all questions which are currently in the works in the ministry, so that you have those as soon as I get them.

Mr. Jackson: Do you still have my one about the Attorney General and the Canada Health Act? We have not lost that one?

Mr. Chairman: He still has not responded. We have sent the letter but I have not had a response. As soon as I get any of those things, I will send them out to you. The minister and the legal counsel, generally speaking, will be here, I would think, for all of that, and other senior members of the ministry staff.

Mr. Jackson: Okay. Then I can proceed with a question to do with the task force.

Mr. Chairman: It would be helpful, because we have them from two until four.

Mr. Jackson: We have 25 minutes left. Do you have any more speakers?

Mr. Chairman: Yes.

Mr. Jackson: Then I will waive, but I would like to speak later.

Mr. Chairman: You can come back.

Mr. D. S. Cooke: I have two brief questions. As was stated by my colleague, we have the select committee that has been established to look at the one aspect of commercialization of social services, which includes health. Also, we have the white paper that will be coming from the Minister without Portfolio responsible for senior citizens, which obviously has something to do with health.

Can you give us an idea of how these two other forums of studying the health care system are going to interact with this task force, if and when it is established?

Hon. Mr. Elston: I am not exactly sure how they interact, but I think it is quite clear that the seniors' efforts were designed to answer some real problems which were there and which were immediately visible to all of us. Bearing in mind that a considerable amount of work has already been done by the Honourable Ron Van Horne, it is quite clear, at least from my standpoint, that is one area that could, in terms of specifics anyway, provide reference material to this task force, rather than its having to do the groundwork in any study that might include work on institutions for seniors, or whatever. I imagine it could be complementary to work that was being done by the task force. However, again, if you want to recommend through this committee that I consider developing, with your assistance, some suggestion for the task force to consider in depth regarding seniors, I have no problem in taking that message back.

Mr. D. S. Cooke: I would feel much more comfortable about making any

suggestions after I know what you are suggesting the task force does and what the Premier is suggesting. I, for one, think this committee would be best to wait until we have some draft terms of reference from the government, and then we can react and add to them. For us to establish the terms of reference for your government--

Hon. Mr. Elston: We are asking for suggestions and questions which you think would be helpful for us to examine.

Mr. D. S. Cooke: I will react when it is time to react.

I want to ask about something that relates to the task force. Since the Ontario Medical Association has made this compromise proposal of hooking up the task force, and since one of the terms of reference is extra billing, and since I think you made it clear--I might be wrong--that concept was rejected by the government and, therefore, we are going to proceed with Bill 94 and not wait for some task force to report on the whole health care system, including extra billing, what are you guys meeting about every week, sometimes twice a week?

Mr. Davis: We could ask that of you people.

Mr. D. S. Cooke: I gather you had a meeting again last night. What do you discuss with the OMA when it has made it very clear that extra billing is not going to be banned now, we have to wait for some task force to report, and you have said that extra billing is going to be banned now? How interesting are your discussions?

Hon. Mr. Elston: Very interesting discussions.

Mr. D. S. Cooke: What are you discussing?

Hon. Mr. Elston: We have been quite clear that the content of our discussions is private. We are working on items of concern and, quite honestly, that is as far as I can go in explaining what goes on in our discussions.

Mr. D. S. Cooke: You must have a lot of time for eating.

Mr. Davis: You should look at their bill.

Mr. D. S. Cooke: Yes, I can imagine it.

How long do you think this process is going to go on before we find out what the outcome is? You had another meeting this week and other meetings are planned.

Hon. Mr. Elston: We are working away and are determined that we will meet again. I cannot predict when the discussions will end or whatever. Last Thursday there was some indication that we would not meet again. We have met again twice since then. We will continue to meet and make progress for the benefit of the people of the province.

Mr. D. S. Cooke: Progress to what though? Are you still saying here in front of the committee that when this process is completed, there will be a total ban on extra billing in Ontario?

Hon. Mr. Elston: It is quite clear that we are pursuing our policy on that basis.

Mr. D. S. Cooke: Are you prepared to tell us today that when we are finished Bills 54 and 55 in this committee we can do clause-by-clause on Bill 94 and report that back to the House?

Hon. Mr. Elston: I do not know what I can tell you with regard to your arranging your own schedule. I had made some suggestions before about when Bills 54 and 55 might go to clause-by-clause, and a certain chairman advised me that was not my role. You order your business and you do that. I am here to assist you in clause-by-clause and I have learned my lesson not to expect to make some suggestions about how you handle your role here. You guys order your business.

Mr. D. S. Cooke: I hope Bills 54 and 55 can be finished within a matter of days, which would then mean we should be able to start Bill 94 late next week or at the beginning of the week after, depending on what the final outcome of the committee schedule is, if this committee reports Bill 94 early in the new session. I am talking the second week. Are you prepared to call that bill for third reading and proclaim it as law in this province, or are you going to continue with these meetings with the OMA and delay proclamation or calling of the bill on third reading?

Hon. Mr. Elston: It is quite clear that we will continue to meet with the OMA. When you do your work, you will report it back to the House. Then it is in the hands of the House leader and others to put in place when we will have--

Mr. D. S. Cooke: No. You know the process as well as I do. The government orders the business and it will be up to you to call third reading.

Hon. Mr. Elston: That is right.

Mr. D. S. Cooke: I am asking you whether you are going to call third reading of the bill.

Hon. Mr. Elston: The House leader has to deal as well with other pieces of legislation. Let me tell you, I am looking forward to your coming back as a committee and making your report to us.

Mr. Davis: That answer is no.

Mr. D. S. Cooke: The answer is maybe, perhaps.

Mr. Bernier: I have to admit I am getting more confused and frustrated daily as we go through this exercise.

I think we have heard on a number of instances that you have been meeting with the OMA privately, secretly, sometimes by yourself, sometimes with the Premier and other times not, and discussing a broad range of issues.

Mr. Davis: Always with the Attorney General.

Mr. Bernier: Always with the Attorney General because he has control of the whole situation, but we have not heard from him yet. We heard from the OMA as you noted just the other day. The OMA made it very clear to us that it had suggested a task force to look at all aspects of the health care system, delivery, expansion, financing, and even the opting-out issue. That was all part of the whole package. They suggested that. It is obvious to us that the government has turned down that suggestion.

NOW you are before this committee today asking for another task force with a broad range of terms of reference, asking for our assistance to help you put together a package that would look at the total health care system. If this committee were to pass a resolution adopting the OMA position that we look at the whole package and that bill 94 be hoisted for a year until this task force, so to speak, was to look at all the areas you would like looked at, would you consider that? Would you accept it?

3:40 p.m.

Hon. Mr. Elston: You can make a report to us, but I can tell you we are moving on with our legislation. If you refuse to report the bill, or whatever it is you can do, then I cannot move.

Mr. Chairman: The effect of that motion could be to not report the bill.

Mr. Bernier: If we did move ahead with a resolution saying we adopt the OMA position, you would not accept it; you would want to charge ahead with bill 94 as it has been presented to us.

Hon. Mr. Elston: The bill will continue to be processed. It is in this committee. You have finished with the oral presentations. There will be clause-by-clause as soon as you get through with other stuff, and you will report back.

Mr. Bernier: What you are saying to us is you want terms of reference from this committee, but do not touch the opting-out issue. We will ignore that, but anything else we will look at. Is that what you are saying? You said that to the OMA.

Hon. Mr. Elston: Do you want to suggest to the committee that there be certain terms of reference? I am here to accept those pieces of advice and take them back to the committee that would study looking into the task force. You can suggest whatever as a committee. If that is the official position of the committee, let me know. In the interim, however, I am accepting unofficially a couple of statements that you have made with respect to northern health care.

Mr. Chairman: Mr. Reville's concerns, too, I presume, about the research and so on?

Hon. Mr. Elston: Yes.

Mr. Chairman: As I understand it, we can send off any suggestions we wish in any manner we wish, but they do not need to be acted upon. The only means that would have a major impact would be what you have just broached, which is the idea that it would be possible for the committee to, for instance, accept the OMA's position that these things be done together, and effectively that can be handled as soon as we come to clause-by-clause. We will vote first on the hoist motion put forward by Mr. Grossman and that could effectively stop us from reporting the bill. We could send off some correspondence that we were going to do that beforehand, but the effective means of dealing with the ordering of our business would be to have that kind of a motion voted on specifically.

Mr. Bernier: The point I am trying to make is that our hands are tied on certain issues. We know in advance that the government will not accept

the recommendations in certain areas. Am I right or wrong?

Hon. Mr. Elston: Do you mean with respect to the bill?

Mr. Bernier: Yes.

Hon. Mr. Elston: If you do not report it back to us, we cannot move with it. It is quite clear. If you want to adopt a motion of this committee, we have to accept that as the advice of this committee. We review it. It is part of the advice that we receive to put together the terms of reference and the committee membership obviously. The Premier asked that you provide some advice for us to consider, and we will consider your recommendation and your motions.

Mr. Chairman: We ended with Mr. Jackson. There were a couple of questions that he wanted to raise. We should be thinking about motions, if I might start getting your heads geared in that direction.

Mr. Jackson: Today?

Mr. Chairman: I think today makes all the sense in the world. We are moving into three days on Bills 54 and 55 and then we have no specific plans following that. We have the request by the Minister of Education that he will be ready by next week to go into clause-by-clause on Bill 30.

Mr. Davis: Already?

Mr. Chairman: Yes.

Mr. Davis: That is very interesting.

Mr. Jackson: They said they would be ready on Friday right after the by-election.

Mr. Davis: That is very interesting.

Mr. Chairman: I have a suggestion by Mr. Cooke that we proceed with Bill 94, which has just been raised. There are a number of potential motions that we should probably deal with today while we have everybody here--it would be the obvious way to move from today--the first one, of course, being what we want to do about this terms of reference question.

Mr. Jackson: We have heard extensive comments from the Minister of Health about those things that he will not consider, even if the task force includes them in its terms of reference. Will the minister please be specific and give us a couple of examples of issues which he would like included in the task force?

Hon. Mr. Elston: No. We are basically still looking at advice as to where we go with questions in health care and I think it is premature for me to say anything about it. I am here to receive any suggestions you might have. That is what my role is here today.

Mr. Jackson: Fair ball, but I am trying to get a handle on what the hell you want to do with this thing. You invite the QMA and it talks about a variety of issues which should be before the task force. Then they say, "Let us put extra billing on the table," and you said, "No." Then you get the

Premier meandering on two separate occasions with major items and then he says, "They are not going to be part of the terms of reference, even though I have been talking to the QMA, the hospital association and other groups privately about it for the past four and a half months."

Now you come here and ask this committee for some input on the terms of reference. We ask you, "Is there something specific you are considering?" You say: "No. I am not prepared to comment. Where would you like to go?" What kind of cat-and-mouse game is this with health care? If I cannot get a straight answer from you, how the hell do we get the Premier here to get a straight answer from him?

Hon. Mr. Elston: It is quite clear that you had invited some response from the Premier on the basis that you, as a committee, were interested in any task force considerations. He responded by saying, "Please provide us with your suggestions of items that are of interest to you." Some of those items may have been generated out of the discussions that surrounded the public deliberations on Bill 94. I am here to receive that from you and to let you know that the framework for the task force, the membership and the terms of reference are not set; they are open for some of the suggestions you might want to make.

Mr. Jackson: I have heard that pat response enough. When you say you have heard my response on the terms of reference, we can just dispense with the four other sentences. At this point, I think the committee understands your answer on that.

If you are saying they should emerge from the deliberations of this committee, you and the Premier as well as other members of the Liberal caucus, have made extensive comments about your infatuation with the Quebec system--

Hon. Mr. Elston: I am sorry; I missed the first part.

Mr. Chairman: It was not completed yet. You were saying, "Should recommendations emerge..." Mr. Jackson, and then you were going back, were you?

Mr. Jackson: I was saying that what might emerge from the deliberations of this committee could help in giving you advice as to what the terms of reference will be for this task force. I want to give you two examples of discussions from this committee and ask whether you are interested in receiving these as possible terms of reference. The two examples are as follows.

The Quebec system has been used as a model. By a majority vote, for whatever reason, this committee voted against bringing before the committee any understanding of the delivery of universal health care in Quebec. Obviously, your task force will be talking about the Quebec system. Is that a fair statement to make?

Hon. Mr. Elston: I do not think so, because the terms of reference at this point have not been set--

Mr. Jackson: Have not been set. Okay; I got the rest of it.

Hon. Mr. Elston: If you want to recommend to us that it be part of the deliberations of the committee, you can make that recommendation.

Mr. Jackson: As a Liberal Party, you have campaigned and suggested

that true universality would be the elimination of all premium payments because they present a further impediment to the public of obtaining health care--the very simple act of some people in lower-income groups having to pay premiums. This is going to come at a cost to the general revenues of this province of about \$1.2 billion. Are you or will your task force be considering this very point of the elimination of premium payments?

Hon. Mr. Elston: Make that suggestion and recommendation. That is what I am here for.

Mr. Jackson: At this time, there are no terms of reference, etc., etc.?

Mr. Chairman: That is right.

Mr. Jackson: Your same answer.

Mr. Reyecraft: You got it.

Mr. Jackson: I am quick on the uptake.

Mr. Chairman: The other thing I might--

Mr. Jackson: The last question I have is about universal health care--

Interjections.

Mr. Bernier: Where is the leadership? Who is running the show? Do you want us to run the show? We will come back and run the show.

Mr. Chairman: Order.

Mr. Jackson: There have been presentations made before this committee about a means test in any form or an identification of the results of a means test, being the card, being offensive. We have received several deputations on that point. Currently, we have a drug program that is not universal--it is selective--and it involves that process. Will your task force be investigating or will your government be promoting a universal drug program that will eliminate the so-called offensive practice in this province of identifying persons on the basis of means for access to drugs, which are an extension of their health care?

Hon. Mr. Elston: It is a question of policy on drug programs. If you want to suggest that as part of the terms of reference from your committee, I am agreeable to accepting that.

Mr. Jackson: You are not currently considering that issue.

3:50 p.m.

Hon. Mr. Elston: It is quite clear that we have a program that is not universal now. There are some jurisdictions that do have universal programs. If we have legislation with respect to drug programs that does not allow us to manage the system in an efficient manner and provide us with reasonable prices, we will have more difficulty in expanding the program. That is what we are about with respect to Bills 54 and 55. Quite honestly, I think we will get better value and be able to serve more people if we are able to make sure we have a program that we can manage efficiently and effectively.

Mr. Jackson: We are not getting the Minister of Health starting to talk about utilization efficiency as the Premier did. Heaven forbid. That would touch off a whole new series of debates, and we do not want to do that.

Mr. Chairman: I know that is not your final point. I can tell it is not your final point.

Mr. Jackson: The final question has to do with an article that appeared today in the Globe and Mail with reference to universal dental care for elementary students in Ontario. Is it the intention to short-circuit any task force with that concept, or would you not want that to be part of the terms of reference, given that it may be presented in the House? And if it is presented in the House, are we to assume that it will not be part of the terms of reference?

Mr. Davis: He is going to say--

Hon. Mr. Elston: I am open to the terms of reference suggested.

Mr. Chairman: If I might--

Mr. Jackson: You are just not open. So you might hold the dental bill and make it part of--

Mr. G. I. Miller: In 1943, you were going to bring that in.

Mr. Jackson: Mr. Chairman--

Interjection.

Mr. Jackson: You are not open to the suggestion that extra billing be put into the task force. Are you open to a dental plan being put into its terms of reference?

Hon. Mr. Elston: Make the recommendation to the committee.

Mr. Chairman: If I might summarize--

Mr. Jackson: Thank you, Mr. Chairman.

Mr. Davis: I do not think the minister knows what he is doing.

Mr. Chairman: If I might summarize the recent reaction--

Interjections.

Mr. Chairman: Order. Just to clarify things, you have been told that the committee, which does not exist, does not have terms of reference yet, but that it is within the power of this committee to make any recommendations it wishes and that the government may or may not entertain those at the time of establishing this--

Interjection.

Mr. Chairman: Exactly.

Mr. Davis: Let them struggle with their own problems.

Mr. Chairman: Mr. Cooke wanted on the list, and then I would like us to get to some procedural motions on all of this so we can decide what we are going to do.

Mr. D. S. Cooke: I was actually going to make a motion.

Mr. Chairman: That would be great. Why do I not just take it? I am not going to give you any direction at all.

Mr. D. S. Cooke moves that the committee write to the Premier and ask for copies of draft terms of reference upon which it can then decide whether it is going to comment.

Hon. Mr. Elston: I know there are no draft terms of reference.

Mr. D. S. Cooke: When you have draft terms of reference, the Premier can write back.

Mr. Ward: What did this letter say?

Mr. Chairman: We have had only one letter, and that was in response to the letter, which you have here, inviting him to come and talk to us more about those specific terms of reference, which we sent as well to the minister.

The motion, which is understood as having been moved, asks that the Premier send us draft terms of reference for the health care task force when they are prepared. Is that correct?

Mr. D. S. Cooke: Right.

Mr. Chairman: Then we will comment on those?

Mr. D. S. Cooke: We can ask for them now, although the minister says there are none in existence.

Mr. Chairman: If we say "when they are prepared," they may be prepared now and we can still get them. If they are not prepared now, it does not get us back an answer which says they do not exist, as we have just heard.

Mr. D. S. Cooke: This afternoon, if anything, it is very clear that the minister and this government do not know what they want to do with this task force. It was just something that was floated out there at some point. It was originally dreamed up back in the fall with the OMA.

Because there was some difficulty in this committee as a result of some statements the Premier made, this has been his way out: to write us a letter and say, "Participate in drafting our terms of reference, and we may or may not listen to you, but give us your suggestions."

It would be a waste of our time as a committee. I have no idea what the minister or the government plans to do with this task force. We already have Mr. Van Horne about to release a white paper on senior citizens. We have a select committee that is going to study commercialization of health care. Now the government wants to set up another task force, which is going to look at the whole thing, whatever that is.

It is an absolutely ridiculous idea, and I do not think we should be showing the leadership on this. It is not our responsibility to show the

leadership on this. You guys have an idea for a task force; tell us what you are talking about. Do not just say, "We will do anything you guys want us to do," or "We will consider anything you guys want us to do." That is a silly approach to health care planning.

Mr. Chairman: Mr. Cooke has moved that the committee write to the Premier and ask him for copies of draft terms of reference for the health care task force on which we can then decide whether to comment. Why not cut it off and say that "the committee write to the Premier and ask him for copies of the draft terms of reference for the health care task force"? We can leave it at that.

Mr. Ward: It is obvious the committee is not willing to respond with any concrete suggestions in terms of what should be included in the task force's terms of reference. I take it that motion responds to the Premier by saying this committee is either unwilling on the part of your caucus colleagues or unable on the part of the Tories to offer any concrete suggestions. Is that in effect what the motion is saying, that this committee does not want to provide input with regard to that?

Mr. Bernier: What we are asking for is some leadership from the government. That is all we are asking for.

Mr. D. S. Cooke: Point fingers if you want, but the reality is that you guys do not know what you want.

Mr. Chairman: I try my best to deal with a speakers' list. I find that the best way to do it. I presume that is a rhetorical question or one that somebody will answer when he is on the list.

Before we go on, now that we are getting into procedural matters, we can thank the minister for his attendance. We appreciate the couple of hours you have spent with us this day, Minister, and we will see you tomorrow morning.

Hon. Mr. Elston: And I appreciate the time I have spent with you.

Mr. Chairman: I know you do; I can see that clearly. We will see you tomorrow morning.

Mr. Ward, do you have anything further on the motion? No. Mr. Jackson is next on the list.

Mr. Jackson: I want to raise an amendment to this motion by requesting the Legislature to petition the Premier to attend before this committee. I would like the assistance of the clerk to achieve that by amending Mr. Cooke's motion.

Interjection.

Mr. Jackson: No. I would like to present a motion before the Legislature requesting the Premier's attendance before this committee to discuss what is in Mr. Cooke's motion. I would like that entertained as an amendment.

Mr. Chairman: The difficulty I have with it as an amendment at the moment is that you want him to come and discuss whether he is going to write us about copies of the draft terms.

Mr. Jackson: No.

Mr. Chairman: That is the wording I put down.

Mr. D. S. Cooke: He did not know what the wording was.

Mr. Jackson: I will give you the wording in a moment, but just to clarify--

Mr. Chairman: It would be better to have it as a separate motion. That is all I am saying. If this has to do with the steps one must take in getting a witness before a committee, it might be clearer to have it as a separate motion.

Mr. Jackson: By your own admission, you are not clear as to what my intent is. Can I wait for a ruling until after I have clarified my intent?

Mr. Chairman: The best way to do it, as you know, is to put the motion and then to explain it. However, I have not heard the motion; I have just heard that you want to amend--

Mr. Jackson: Then I will put a motion that this committee request the Legislature to petition the Premier of the province of Ontario to attend before the standing committee on social development to discuss and present the draft terms of reference for the health care task force.

I wish that to be treated as an amendment. I will wait for the ruling and then, with your indulgence, I will speak to it.

Mr. Chairman: It is awkward at the moment to see it as an amendment in terms of the wording.

Clerk of the Committee: You really cannot have it because it is a totally different motion by itself. Your best attitude would be simply to go with Mr. Cooke's motion and then your own motion; it is completely and diametrically opposing what you have in there.

Mr. Jackson: On what basis? That we want him to attend versus to send it in writing?

Clerk of the Committee: Yes.

Mr. Chairman: As it stands, it is a different motion; it is asking for something totally different. If it were to be an amendment, it would be to replace certain words with other words, which might have the same effect. However, what you have essentially given me is a replacement motion for another course of action that might take place. That is the difficulty I have with it.

4 p.m.

Mr. Jackson: I was trying to draw a parallel to the time when Mr. Cooke introduced the motion on April 1 that the Premier advise the committee, and I amended that by stating that he appear. I thought that was a sufficient analogy.

Mr. Chairman: It is easy to replace the words "advise" or "to appear," but the difficulty is that our first motion reads, "I move that this

committee write to the Premier and ask him for copies of the draft terms of reference for the health care task force." It is hard to see where your motion would amend that. Where would it come in? If it comes in at the end of that, which one presumes is in the wording "This committee requests the Legislature to petition the Premier of the province of Ontario to attend the standing committee on social development to discuss and present the draft terms of reference for the health care task force," it is essentially a replacement and not an amendment.

Mr. Jackson: Then will you allow an amendment that does not petition the Legislature but invites the Premier to this committee one more time? If we continue another round of nonresponses, I am sure my colleagues in the New Democratic Party will give serious consideration to my replacement amendment.

Clerk of the Committee: Withdraw the motion; then you can vote on the amendment.

Mr. Jackson: I will. For the purposes of Hansard, I will withdraw that amendment if the chairman will accept the second amendment.

Mr. Chairman: It would amend Mr. Cooke's motion to read, "I move that this committee write to the Premier requesting his attendance to discuss and present the draft terms of reference for the health care task force."

Mr. Jackson: Thank you; that is the amendment.

Mr. Chairman: That is the amendment and it is in order. The discussion will now be on the amendment.

Mr. Jackson: It is self-explanatory, and I think you heard extensively from both Mr. Cooke and me on this issue on two other occasions.

Mr. Davis: I have no problem in supporting it when the Minister of Health comes here as a representative of the Premier and has no content and refuses to give this committee any content as to the direction they are going to go with respect to a health care task force in this province. It shows the ineffectiveness of the Liberals and their inability to give any direction in the health care system. For that reason, I will have no problem supporting it.

Mr. Chairman: If there is no other discussion, the order we will take things in will be to deal first with the amendment, which I think you all understand rather than me trying to do it again from my hotchpotch notes here.

All those in favour of Mr. Jackson's amendment please raise your hands. All those opposed? Carried.

We will now deal with Mr. Cooke's motion as amended by Mr. Jackson's motion. Any further discussion? If not, all those in favour please raise your hands. All those opposed?

Motion, as amended, agreed to.

Mr. Chairman: I will therefore be writing to the Premier, inviting him to attend with the draft terms of reference of the health care task force.

The other matter I would like some advice from you on is the ordering of our business. At the moment we know what we are going to do presumably up until Friday of this week. We may or may not have finished bill 54 and Bill

55. If you have any chance to look at the extensive work Albert has done already, you can see there is a lot of work before us in terms of getting through the clause-by-clause stage. Unless there is a fair amount of consensus on those motions, it may even take us longer.

What we need to know at the moment is whether we want to make plans for work next week, on April 23, which would be a normal sitting day for us, and what we wish to do at that time. We also have the question of the straight ordering, if I might put it that way. Perhaps we can get some idea from you about your preference about our order. Do we go from Bill 54 to Bill 55, to Bill 30 and then to Bill 94? Do we go from Bills 54 and 55 to Bill 94 and then to Bill 30?

I presume there is interest in finishing Bills 54 and 55 before we do anything else. Is there agreement on that? Do you wish to finish Bills 54 and 55 before we do anything else? There is a consensus on that? Okay.

What would you have us do after that? I want to start preparing people. If it is Bill 30, we have to start notifying again those various groups who expressed their desire to attend and find out what days would be best for them to come back before us. If it is Bill 94, obviously there is some work that still needs to be got together in terms of replies to questions by the ministry.

Is there a motion on what you would like to do?

Mr. D. S. Cooke: Bill 94 is a very short bill. I would suggest that we complete Bills 54 and 55 and then go to Bill 94, clause by clause.

Mr. Chairman: Is there any discussion of that recommendation?

Mr. Reyecraft: I am sorry?

Mr. Chairman: The recommendation was that we complete Bills 54 and 55 and then move to Bill 94, because it is a short piece of legislation, as compared with Bill 30. Any comments from members?

Mr. Bernier: Do we have any indication from the government about these bills?

Mr. Chairman: I had from the Minister of Education (Mr. Conway) in the past the idea he would be prepared next week. I think he would be prepared to get the information out to those various major groups as well in advance of our actually meeting. We heard today from the Minister of Health (Mr. Elston) that he has no concerns about our proceeding with Bill 94 at this stage.

Mr. Davis: I did not hear that.

Mr. Chairman: In a very professional fashion, if I might say so. He made no comment about our ordering our business.

Mr. Bernier: We have no direction from the government on which one it wants first.

Mr. D. S. Cooke: No. Just that it wants us to make a decision.

Mr. Chairman: I will remind you that because the throne speech debate is on, we will have to ask for special permission to meet during that

period. We have already discussed our desire to do that so we can complete some business.

Mr. Reycraft: Bill 30 is a very important piece of legislation. It is important that the areas of controversy be resolved so that both the public and separate boards across the province know the conditions under which they are going to be operating after September 1 of this year. However, I would agree with Mr. Cooke's observation that Bill 94 is a relatively short one and clause-by-clause debate on it should not take a great deal of time. Therefore, we are prepared to support his motion.

Mr. Jackson: On behalf of the Conservatives on the committee, for us to respond adequately to Mr. Cooke's suggestion, we would need time to caucus because of the extent of the amendments we wish to bring forward on bill 94. At no point has there been a request for or a discussion about the timetable for assembling amendments to the bill.

I am not in a position to respond now on that point, but I think that as chairman you may wish to determine whether there are any further amendments. The track record of the government has been, on average, three to four amendments after the initial bill is introduced. We are not sure whether there will be any additional ones on Bill 94.

For our part, as a result of the presentations that have been made before the committee, we will have a series of amendments to be dealt with, but I could not even give you a number at this point, which would help us to determine the ordering of the business.

Mr. Chairman: I am going to need a motion of some sort to deal with this.

Mr. Ward: Do you not have one?

Mr. Chairman: No, I had a suggestion. You said, "I would like to suggest"; you did not say, "I would like to move."

Mr. D. S. Cooke: I apologize. When I took the floor I said I would have a motion. If I did not word it in--

Mr. Chairman: Do you consider that a motion? The motion is that we consider Bill 94 after Bills 54 and 55.

Is there any further debate on that suggestion?

4:10 p.m.

Mr. Davis: I just want to say that I find it extremely interesting that the official government representatives have indicated how important Bill 30 is, and they then have moved to Bill 94. We were certainly not aware that there was to be a vote today on how we were going to order our business. If we had had some chance to get back to our caucus, we could have asked which way the caucus wanted us to go. If you hold the vote, we will have to live with it.

Mr. Chairman: The motion is in order; it is not out of order.

Mr. Davis: Yes, I know it is in order.

Mr. Chairman: We can have further discussions here. If there are other people who would like to speak about this, then we can see what comes out of it.

Mr. Jackson: My concern is that we do not know the extent to which our timetable will be complicated by the amount of work to be done on Bills 54 and 55. The rumour going around is that the bills are being considered for withdrawal. I again state that they are rumours, but all we have before us is the researcher's efforts, not anything official from the government.

Perhaps I might ask the government whether it is prepared to present the amendments tomorrow morning. How much time will it be providing us to examine them? There is also an outstanding offer to allow the five groups to respond to your amendments, since they came ready, willing and able to respond and the government was not ready with its amendments.

Mr. Ward: The committee ordered its business some time ago, and the government is prepared to proceed with Bills 54 and 55 tomorrow.

Mr. Jackson: Tomorrow, then.

Mr. Ward: With regard to the other matters, I do not think the issue of ordering the committee's business is particularly complex. I am not sure what I am hearing over there. Is it that you are unable to take a position, even on ordering the committee's business?

Mr. Jackson: No. I am reacting to the parliamentary assistant to the Minister of Education (Mr. Conway), who said that with Bill 30 it is very important that the controversies be overcome. I am not clear on whether he is stating his willingness on behalf of the minister to waive Bill 30 a second time for an additional bill. What I raised was, are we comfortable with the amount of time that is going to be required to do not only Bill 94 but also Bills 54 and 55. My consistent concern before this committee is jumping from bill to bill, and I made that point when we first started reordering. I said I would just like to stay with one bill and finish it.

Mr. Ward: Have we not established that we will begin clause-by-clause consideration of Bills 54 and 55 and take it to its conclusion?

Mr. Chairman: Yes.

Mr. Ward: Then we will go to another bill.

Mr. Jackson: If you were listening to me, Mr. Ward, I asked whether you would be ready tomorrow morning, because we had not been officially advised.

Mr. Ward: And the answer was?

Mr. Jackson: The answer was yes. I also asked you whether the groups who this committee had agreed would be able to present their reactions to your amendments had been given sufficient notice to attend in order to respond and what arrangements were being made to so advise them and to have them before the committee.

Mr. Chairman: Two things. One, this is not in order, because the motion is about debating Bill 94 after Bills 54 and 55. Dealing with the substance of the procedures around Bills 54 and 55 is not in order, but I might--

Mr. Jackson: You can rule me out of order, Mr. Chairman.

Mr. Chairman: I just did, but I might remind you that there has been no commitment to bring people back before us again on those bills.

Mr. Jackson: You check Hansard. That offer was made. They were standing here waiting to give their reaction to a bill, and the government said: "We are not ready. Not only are we not ready, it is not the same substance." We promised those groups that they would have a chance to react.

Mr. Chairman: As I recall it--and I may be wrong; we can check Hansard on this--I think it was that this would provide time, because of the break we were having again, for further interaction among those groups, the government and all parties--

Mr. Jackson: No. That is ridiculous. That is absolutely absurd.

Mr. Davis: I am sorry, that is not right.

Mr. Chairman: If I am wrong, then we will discover it in Hansard. I do not know where you are rushing off to, Mr. Jackson, unless you do not wish to vote.

Mr. Jackson: You are going to railroad these groups and you are not going to give them a chance to come back?

Mr. Chairman: Mr. Jackson, the first point I made was that it is not in order. You have already passed through the fact that you are going to deal with Bills 54 and 55 tomorrow and finish with them. If you want to deal with another motion--

Mr. Jackson: Why do you not just rule me out of order and get it over with?

Mr. Chairman: I have already done that.

Mr. Jackson: Then why are you talking?

Mr. Chairman: I was hoping you would be a happier man after your baby was here, but obviously you are still as snarky as ever.

Mr. Jackson: A good comeback.

Mr. Chairman: You are going to deal with Bills 54 and 55. If you wish to make another motion around the ordering of business of bills 54 and 55, you may do so. All I am saying is that that is not in order in terms of the motion we have before us concerning what we are going to do after bills 54 and 55, which is Bill 94.

Mr. Jackson: I was asking a point of clarification; that is all I was asking. I have not seen a point of clarification--

Mr. Reville: Stonewall Jackson.

Mr. Davis: May I ask a point of clarification to help? I do not want to debate; I just want you to rule on it.

Tomorrow if we bring you the Hansard that indicates that those major groups were going to have a second opportunity to comment on the amendments of the minister and the government who drew up Bills 54 and 55, then you would give them another day to go and look at it?

Mr. Chairman: No. That would be your decision--or you may make that motion, as I say, today if you wish to do so.

Mr. Davis: Okay. I understand that what the representatives from the Liberal Party are saying today is that--

Mr. Chairman: Unless you want to move that we do Bill 94 before we do that.

Mr. Davis: --they are going to do Bill 94 before they do Bill 30.

Mr. Chairman: Yes.

Mr. Davis: The representative of the Minister of Education, who is sitting on that side, is saying the Minister of Education has indicated that this is the way he wants this committee to go.

Mr. Chairman: I have not heard from Mr. Reycraft on that.

Mr. Davis: It might be interesting, since the Minister of Education pulled Bill 30 and we were prepared to start our amendments at the beginning of this week. Am I now hearing that he is waiting again? I was under the impression that he was ready to go Friday after the election. Now is he telling us he is still not ready?

Mr. Chairman: The motion by Mr. Cooke was that we deal with Bill 94, and the parliamentary assistant has said he would be willing to do so. That is what we have heard to this point.

Mr. Davis: Thank you for the clarification, Mr. Chairman.

Mr. Chairman: All those in favour of Mr. Cooke's motion that we deal with Bill 94 after completing Bills 54 and 55?

All those opposed?

You have to vote way or the other.

Mr. Jackson: Oh, do we?

Mr. Chairman: Yes, I am afraid so.

Interjections.

Mr. Chairman: No, I have to see hands go up. I am not recording votes; I am just recording counts.

Mr. Davis: May I ask you a question of clarification?

Mr. Chairman: No, you cannot. I am in the middle of a vote.

Mr. Jackson: We have been through this bill. Just whip it up.

Mr. Chairman: Okay.

Motion agreed to.

Mr. Chairman: I should remind members of one thing: If you want at any time, you can call for recorded votes, but we have not had anybody do

that. I will explain that to you if you want at some point, but you must vote; that is the rule.

Tomorrow morning anybody who wishes to apprise me of anything different in terms of the ordering of our business on Bills 54 and 55 may do so--or you may do it now, if you wish.

Mr. Davis: Did you say we could make the motion today?

Mr. Chairman: If you wish to make a motion, you may; if not, we can do it first thing in the morning.

Mr. Davis: Tomorrow morning.

Mr. Chairman: All right. Is there anything else, then? Otherwise, we are starting Bills 54 and 55 tomorrow morning and then we will move to Bill 94.

The committee adjourned at 4:17 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ONTARIO DRUG BENEFIT ACT

PRESCRIPTION DRUG COST REGULATION ACT

WEDNESDAY, APRIL 16, 1986

Morning Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Cooke, D. S. (Windsor-Riverside NDP)

Bernier, L. (Kenora PC)

Davis, W. C. (Scarborough Centre PC)

Jackson, C. (Burlington South PC)

Miller, G. I. (Haldimand-Norfolk L)

Orfer, S. (Mississauga North L)

Reycraft, D. R. (Middlesex L)

Stephenson, B. M. (York Mills PC)

Swart, M. L. (Welland-Thorold NDP)

Ward, C. C. (Wentworth North L)

Substitutions:

Laughren, F. (Nickel Belt NDP) for Mr. Swart

Leluk, N. G. (York West PC) for Miss Stephenson

Clerk: Carrozza, F.

Clerk pro tem: Decker, T.

Staff:

Baldwin, E., Legislative Counsel

Nigro, A., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Health:

Elston, Hon. M. J., Minister of Health (Huron-Bruce L)

Psutka, Dr. D. A., Assistant Deputy Minister, Emergency Services, Laboratories
and Drug Programs

Bernstein, D., Director, Legal Services Branch

Burrows, A. R., Director, Drug Programs and Policy Branch

Dyer, Dr. A. E., Deputy Minister

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Wednesday, April 16, 1986

The committee met at 10:12 a.m. in room 151.

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT
(continued)

Consideration of Bill 54, An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs; and of Bill 55, An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs.

Mr. Chairman: I call the meeting to order. The committee is convened today to deal with Bills 54 and 55, clause by clause.

As of last evening there was a possibility that a point of order might be raised at this point regarding further deputations. I have been through the Hansard and have not seen anything further on that matter but I am willing to accept any intervention you would like to make, Mr. Jackson, if you wish.

Mr. Jackson: Yes. Like you, I went through the Hansard and there was clearly a reference to circulating the amendments to the various groups with sufficient time.

Mr. Chairman: When was this?

Mr. Jackson: That was on Tuesday, March 25 at approximately 2:10 p.m. It is on page 1. It was a statement made by the minister. Further statements were made and there is a reference to time lines on page 6. I might as well quote them.

"Once we have the government amendments in as final a form as they can be, when we start consideration of these bills we will need perhaps half a day. We have to change our own amendments and the official opposition will have to think this through and change its amendments."

It was a statement by Mr. Swart, on behalf of the NDP, referencing the time line flowing from when the government tabled its amendments. We have not been given at least the courtesy of that amount of time. There are other references as well. I did not do my homework, it seems to jump off the page at you.

Mr. Chairman: The reference we made yesterday afternoon was to whether or not the various deputations had been given some indication that they would be invited back before the committee. That I did recall--

Mr. Jackson: I still have more reference points. On Tuesday, March 25, in the morning, on page S-21, when responding to the questions I had raised about reaction from the various groups, you enlightened the committee as to a variety of ways in which the committee could operate. You stated:

"There are a number of ways we can operate this afternoon. For instance, we can start going through Bill 54, and whenever there is an area that people feel there had not been enough chance for interaction on, we can flag that clause. Just tell me and we will stand it down and move on to the next clause. We can go through it that way and deal with the ones where we have had a fair amount of response. In the days following we can come back to that after there has been dialogue. Then if you wish, we can bring forward those groups to speak to those specific clauses, or whatever you like. It is quite easy for you to say: 'This is an area where we have a new amendment. We think you should stand this one down until tomorrow morning, or whenever, for discussion.'" A clear indication I think--

Mr. Chairman: If at all possible.

Mr. Jackson: I guess there is sufficient evidence from both the minister and yourself that there would be some role to play for the groups to respond before us as we do the clause-by-clause consideration.

Mr. Chairman: The way I read those various things is that my statement was about possibilities which exist today. If you wish to order our business in that way, in standing down any section at any time, it might be wise. In fact, speaking of legal counsel, initially if there are new amendments from time to time, we may wish to flag potential conflict with another area and we could always stand that down for a day's reflection on it. That would be possible. It is also possible for you to order the business as you wish as a committee and if you wish to give further standing of one kind or another to these groups, that is also a possibility if you choose to do so.

If you look at the first one you start off with in the statements by Mr. Elston, there was talk about further chance of communication between the various parties involved. There have now been several weeks in between where that communication was possible. Whether or not it has been undertaken is something I do not have any control over. It was not specifically about the status of the committee.

As far as I am concerned, we are ready now to launch into clause by clause. It is up to you as a committee to decide how you want to do that. We have a number of options before us and I am willing to be guided by you on that but I did not have a sense from anything like the specific guarantees we talked about before, that we had made those guarantees again. I do not think any of the things you have read have indicated a guarantee there but rather in any case possibilities and in other cases that there would be time for that kind of consideration. If you want to make a procedural motion that we do that kind of thing, then we can do it. At the moment there is nothing in particular which is confining us.

Mr. Jackson: I need further clarification. I do not know if a motion is in order. I am trying to get a handle on how well notified the five interest groups are of the government amendments. As a member of this committee I am not very well informed on them since I only received them last evening. I would hope there would be a considerable focus at the front end of this morning's discussions that specifically clarify those amendments. That would do two things. It would ensure the members of the committee are all up to speed and it would also ensure the four or five interest groups that are present in the room, are also fully aware.

I do not think we are going to have substantive motions on amendments this morning. We may, but I seriously doubt it. That may give us time to get

some feedback from those interest groups during the course of the hearings. There has been no accommodation, and the minister is not here to advise us, except the minister has had an opportunity to communicate directly with the groups, but in no way have other members of this committee, nor the groups had an opportunity to react to the other two opposition representatives.

10:20 a.m.

Mr. Chairman: I may be wrong and maybe Albert can give me an indication of this; but what we were going to proceed with today were the two documents that he prepared, taking as the left-hand column, on Bill 54, the section as was amended by the government in January or whenever; and to use that as our basic guide. My understanding, then--and we can get Albert to clear this up--is that the proposed amendments that he then has in the second column were all ones which were tabled back in March, as far as I know.

If there are new ones subsequent to that, we should probably try to find out now. Why do I not ask Albert for an explanation of what we have in these documents. If this information has been around for several weeks, therefore, there has been lots of time, whether this time has been taken or not, for groups to have discussion on it. If there is much new we should know about it. Then perhaps we can ask the ministry to flag that which is new from the government's perspective.

Mr. Nigro: Mr. Chairman, members of the committee, I spoke with David Bernstein, who is legislative counsel at the Ministry of Health, and he sent me the latest compilation of government amendments for Bill 54 on March 27, which was after the committee considered that legislation. There are some changes in there which were never, to my knowledge tabled before this committee. The middle column does have those changes in it.

Similarly, Mr. Jackson was kind enough to send me two changes from the official opposition, which are in that middle column as well; and Mr. Cooke sent me some NDP changes to the legislation, which is represented in that middle column. I do not believe all those changes in either opposition party's case were tabled either. So, to the best of my knowledge, this is the most recent compilation of amendments, but it is not the most recent compilation of tabled amendments. There have been changes made in Bill 54 at least by the government since the committee considered it.

Mr. Chairman: About how many, Albert, did you notice?

Mr. Nigro: There were some changes. I do not think there were too many, but there were certainly some differences between the Bill 54 changes I received on March 27 and those that were before the committee prior to that date.

Mr. Chairman: The minister has arrived. The concern is being raised about how we proceed at this stage in terms of what the committee has before it. You have just opened up the document that Albert Nigro has had prepared for us by legislative library research. The left hand column contains the act as amended when it came into the public hearing process initially; and then the compilation of all the amendments that Albert had up about this last weekend, I guess, from the various parties.

The concern was raised by Mr. Jackson and Mr. Leluk that there may be new amendments in here from the government that neither committee members nor in fact, the major deputants have had a chance to respond to at this point.

maybe we should start off with an explanation of those new changes before we proceed to do the clause by clause. I was trying to discover from Albert how many of those there were and how substantive they were; or is it the kind of thing that we can actually do as a--

There are two options available to us. We could either start off with a government explanation of all the changes that have been in since the end of March, if you will, and do it that way, or we could use a pattern of discussion that would go as follows: For each section there would be an explanation of what the act says, what it means, and then what the amendments are and an explanation of that before we go any further. If people felt there were ramifications from any of those items, we could then put that section over for another day or a number of hours, whatever the committee wished, so there could be some further dialogue on those matters. We could use either approach to it as far as I am concerned; but that is where we are at the moment, Minister.

From your perspective, which would you prefer to do? Would you prefer to take us through the number of changes that have come in since March 25, or would you prefer to go through it clause by clause?

Hon. Mr. Elston: I am really quite open to what the committee feels is best. I have no real problem with either one. I do not think there are substantial changes, with the exception that there might be one on a couple of clauses with respect to dispute disposition or whatever, but I am in your hands.

Mr. Leluk: Have you or your ministry officials shared with the five interest groups any amendments that have been put forward since the March 25 or--

Hon. Mr. Elston: We have not been able to share with them all, but we have spent a considerable amount of time on a couple of occasions with the Ontario College of Pharmacists and the Ontario Pharmacists' Association. The college, in particular, is important because we are working with a group who will be enforcing the legislation if that is acceptable to the committee.

Mr. Leluk: Is it just those two interest groups?

Hon. Mr. Elston: Those two particular ones and we--

Mr. Leluk: There were no changes affecting the Pharmaceutical Manufacturers Association of Canada--

Hon. Mr. Elston: No. I do not think I have any here that are affecting--

Mr. Leluk: --or the consumers group, or what have you.

Hon. Mr. Elston: I guess that is not true with regard to changes, because when this whole legislation is amended, all of them are going to be affected by the final form of the legislation. We are concerned with sitting and meeting with the UPA and with the college, in particular, because of the nature of its role with this legislation. We want to be sure that it is something with which the college can be comfortable in coming to grips with now the proposed changes might affect it as to enforcement. We spent considerable time with those two groups.

Mr. Jackson: Did any of the five groups express an interest in returning to the committee to react in a final fashion?

Hon. Mr. Elston: The OPA expressed interest in making some comments at times. I do not know whether you want to do it with regard to the entire thing, but I was not able to--

Mr. Jackson: That is fine. I was just asking if it had come up at any time. Did you provide them with any assurances or any encouragements?

Hon. Mr. Elston: I can honestly say I am not opposed to them if the committee wants to hear from them. That is not my role. The committee is here and the manner in which that is done, as I have been told by the chairman on a couple of occasions, is up to the committee. I am not in a position to provide such assurances.

Mr. Jackson: If I understand you correctly, you have no objection if we follow the format of presenting the government amendments to the full committee and then get a response from at least the college.

Hon. Mr. Elston: In fairness, if you are going to present the government amendments, then we would have to do all of the amendments at one time. As I understand it, there may be some changes from others as well. In clause by clause generally--and I am only reflecting upon history--you take a look at the clauses as you go through the bill. This one is first, this one is second, this one is third, and you take a look at what is there. You present amendments and if there is a concern about it not having proper analysis, you call upon the resources of the testimony which has taken some considerable time and you review the clauses being presented on the basis of the testimony. If you need some extra assistance, which this committee has already determined on one occasion that it would like, then the committee is quite able to make that expression. I am only here as a resource person. That is my role here.

Mr. Jackson: If I might, I would like to make two requests. I do not know if they have to be put in the form of a motion. I was going to raise one, but it would be inappropriate to raise it once we start into clause by clause. I wonder if the ministry could take two or three minutes to just give us a clear statement on the Apotex Inc. situation. I am not 100 per cent sure that I caught it all. I do not think that would take up more than three or four minutes of the committee's time.

Hon. Mr. Elston: What kind of a statement do you want?

Mr. Jackson: What happened.

Hon. Mr. Elston: The results?

Mr. Jackson: Where are we now? What is its impact on the bill? If you could just help us with that.

Mr. Chairman: What is the second one.

Mr. Jackson: The second one is if the government could briefly highlight its amendments, I do not even think for purposes of reaction from the members of the committee, but just to highlight them for us in the section. It might be only a four-or five-minute exercise, but it would be very helpful to me. There are many members of this committee who are doing clause by clause for the first time.

Mr. Chairman: Is there a consensus on that? There is no objection from the minister as he has indicated that it is fine. There is a general consensus.

Let us start off with an update of the results of the court hearing regarding Apotex. Have the assistant deputy do it--either will be all right.

Hon. Mr. Elston: Actually I guess the end result of it is that the government was able to have the applications from Apotex dismissed. With regard to the details and what it means to the program, I think Dr. Psutka is probably the better person to deal with it.

10:30 a.m.

Dr. Psutka: As you are aware, there were court actions involving various aspects of running the Ontario drug benefit program. Maybe I should just read into the record the transcript of Mr. Justice O'Leary. It might be the clearest way, rather than giving my interpretation of what the judge said.

"The first transcript deals with the applicant asking for a declaration that there is no authority in the Minister of Health to unilaterally recommend nor in the Lieutenant Governor in Council to act on that recommendation and by regulation determine the listing prices for drugs to be published in the Parcost Comparative Drug Index. The applicant submitted: (1) that part VI of the Health Disciplines Act does not authorize the provincial government unilaterally to fix such prices, and (2) even if the government otherwise has such power in the circumstances of this case, it is proposing to exercise that power without regard for the legitimate expectation of the applicant to be consulted and to determine for itself the price at which its drugs will be listed.

"As it appears from section 155 of the act, the general objective of the Parcost program is to assist the people of Ontario to obtain prescribed drug products of quality at a reasonable cost. In an effort to fulfil that objective, the Minister of Health has, for many years, published in the Parcost Comparative Drug Index the prices which the pharmaceutical manufacturers told him that they were charging drug stores for the various drugs they sold to them. Eventually it became apparent to the minister that the manufacturers, including the applicant, were giving the minister inflated drug price figures, thereby enabling drug stores, without violating section 155, to charge the public for drugs more than the reasonable price which the Parcost program was intended to deliver. The minister complained about this spread pricing conduct.

"After lengthy correspondence and meetings between representatives of the manufacturers, including the applicant, and the minister, and after a period of some months during which more realistic figures were submitted by the manufacturers and were published by the minister, the applicant returned to its former practice of giving to the minister drug prices far in excess of that which it actually charged the drug stores.

"Further correspondence and a meeting between the applicant and the ministry followed. Unable to get from all manufacturers and the applicant in particular, realistic figures as to their drug prices, the minister announced that the Ministry of Health had made its own investigation as to prices and would publish them in the Parcost drug index.

"Section 158(2)(b) of the act states that the Lieutenant Governor in

Council may make regulations by prescribing the Parcost CDI for the purpose of this part. When section 158(2)(b) is read with section 155 of the Health Disciplines Act, the Parcost CDI must contain the list prices of the various drugs, and so the Lieutenant Governor in Council has the authority to prescribe the prices to be listed in the Parcost CDI.

"Further from the evidence before us, it appears the minister has not acted arbitrarily but only after giving the applicant every reasonable opportunity to be heard and to supply him with accurate information as to its drug prices.

"Where the purpose of section 155 is to ensure drugs will be available at a reasonable cost, we specifically reject the contention of the applicant that the minister must list in the Parcost drug index whatever drug price, no matter how inflated, the applicant submits to him, for that would defeat the purpose of the legislation.

"We want it clearly understood, however, that it is our view that the act does not give the Lieutenant Governor in Council the authority to fix the prices at which manufacturers must sell their drugs, but it is essential if the act is to accomplish the purpose we have referred to, that the price at which the manufacturers are selling their drugs be published by the minister. If, as in the circumstances here described, the minister cannot rely on the figures given him by the applicant, then he is entitled to publish the prices which, on proper investigation, he concludes are factual.

"The application is therefore dismissed with costs."

That was the first application dealing with pricing. There is a second application.

"The relief sought by the applicant in this case as put before us is for a declaration that the Lieutenant Governor in Council does not have the power to publish spread prices in the Parcost Comparative Drug Index. This endorsement should be read along with that in 831/85. As is apparent from that endorsement, it is the stated intention of the Minister of Health not to publish any such prices and, accordingly, there is no basis for the relief sought."

That application is dismissed without costs.

The next one is regarding the ibuprofen matter.

"This endorsement applies both to file number 321/85 and file number 66/86. The complaints of Apotex and our disposition of those complaints are as follows:

"1. That the definition of interchangeable pharmaceutical product in the Health Disciplines Act does not allow the DQTC committee to concern itself with the rate of absorption of a drug's active ingredients.

"While subsection 113(1)(e) of the act makes no mention of rate of absorption, when one considers the act as a whole, it is implied that before the Lieutenant Governor by order in council lists the drug as interchangeable in the Parcost CDI, he is entitled to insist that it not only have the same active ingredients as, but be therapeutically equivalent to, the drug for which it is to be interchangeable.

"2. That the DYTU committee was not entitled on the evidence before it to refuse to list certain film-coated Apo-Ibuprofen and to recommend the delisting of all Apo-Ibuprofen as being pharmaceutical products interchangeable with Motrin.

"Because the relative absorption rates of Apo-Ibuprofen and Motrin are significantly different, there was, in our view, ample evidence that the two products might not be interchangeable at least for the treatment of acute pain, and the committee was therefore entitled to reach the decisions that it did.

"3. That the applicant has been denied natural justice and, in particular, that the applicant has been treated unfairly and has been denied the opportunity to present to the committee and to the Ministry of Health all its arguments and materials before decisions were made not to list or delist its product.

"The evidence convinces us that Apotex has been aware throughout the long history of this dispute that the committee was concerned about the rate of absorption of its product and that the committee gave Apotex every reasonable opportunity to dispel that concern. We refer, in particular, to the letter of January 6, 1986, to the solicitor for the applicant and the letter of February 13, 1986, to the applicant advising that the committee were about to consider the question of delisting of Apo-Ibuprofen and inviting Apotex to appear before and provide the committee with any material it wished.

"Those invitations were declined by the solicitor of the applicant on January 10, 1986, and by the applicant himself on February 13, 1986. Therefore, there is nothing in the evidence before us to suggest that the applicant has been denied natural justice in any of its aspects.

"Therefore, both applications are dismissed with costs."

There was one further application which was referred to Divisional Court and it was not of much note.

In summary, the court found in favour of the ministry in the authority to print a formulary. Under the current legislation that is in place, we still have to go to manufacturers to ask for the prices that they state they will be selling their product at to pharmacies. On the other hand, if, in our estimation, through the best available information that we have that those prices are inordinate, the minister can therefore print a price that he is able to substantiate as being a favourable price.

As far as Apo-Ibuprofen is concerned, we have the authority to delist that product. Basically, there was no evidence that the manufacturer had been given anything other than a fair approach by the ministry and that we had dealt with it fairly.

Mr. Chairman: I would prefer us not to have a debate about this. What is in order is the clause-by-clause. I gather it was just the information we were after.

Pernaps, Minister, you or one of your staff could lead us through changes that have come up since March 25. Is that what you are after?

Mr. Jackson: Yes.

Mr. Leluk: Before we proceed, did I understand the minister to say he requested the information on drug prices from manufacturers so that he could proceed with the printing of a new drug formulary?

Hon. Mr. Elston: We have written for more information.

Mr. Leluk: Not yet.

Hon. Mr. Elston: But we have been working quite hard with the Ontario Pharmacists' Association and others. The last I heard at our meeting on Friday is that we are still waiting for some detailed information on the pass-through of the excise tax, for instance. We are working on this.

10:40 a.m.

Mr. Leluk: Can you give us any indication of when we might expect a new drug formulary to be available? There are a lot of pharmacists hurting because of the increased drug prices.

Dr. Psutka: To clarify, we approached the manufacturers in the late part of 1985 for pricing for the January 1986 formulary. The prices we have available to us are based on that information. For us to publish now, we would have to go back to the manufacturers to get prices. If we follow that route, we are looking at six to eight weeks at least to achieve a formulary following the old procedure.

Mr. Chairman: Could we limit this so we have this kind of discussion around particular items in the bill, if necessary? We should probably limit it at the moment. Could you take us through some highlights of the amendments since the last tabling? I guess that is the way to deal with it.

Hon. Mr. Elston: I do not have my entire package with me. Mr. Bernstein was coming over. We have had some mechanical difficulties with a couple of things.

Mr. Bernstein: I tried to make copies of all I had.

Hon. Mr. Elston: I can talk in general terms about a couple of areas we are looking at. We have made suggestions for changes on two or three items.

For instance, one area looks at the question of binding arbitration. We are in a position to propose an amendment to our bill which would see a set of negotiations following a pattern more akin to the mechanisms set up for dealing with other professionals, namely the Ontario Medical Association, where you end up having representatives from the groups, government and the Ontario Pharmacists' Association, sitting down with a chairman, having the information, and coming up with an agreement. If there were no agreement, the chairman would present the results and deliberations for public review. Then we would come on with determining the fee. That would be an amendment which we would propose to a possible dispute mechanism.

In addition to this, we met with the college. We looked at some of the items which had raised some concerns with them in terms of enforcement. At page 55, we looked at the question of having oral notes of presentations being made to pharmacists. We are prepared to take a look at this on the basis that in some manner they would have to be reported by pharmacists. It would be under subsection 2(4) of Bill 55.

In addition to this, we have drafted an amendment which would provide the Ontario College of Pharmacists with the ability to make regulations to assist it in managing its programs. In a similar vein to the Health Disciplines Act, we would also have the ability to request the passage of a regulation which was in the public interest. The college would have a 60-day time frame within which to introduce it and pass it.

I am not sure exactly what others we have. Those are some of the major ones we deliberated on last week. Because of the regulation-passing ability under our amendment, we also talked a little about what that would mean for the college and how we would put that whole system into operation. Mainly, these are the significant changes for us.

I am sorry; there is one other. We had calls and correspondence from the Ontario Hospital Association requesting that it be the one to negotiate the fees for hospital pharmacies. I am quite willing to agree to that particular item. I am not sure whether this is of concern to the committee. The OHA felt that whether it was an accredited or nonaccredited hospital pharmacy, any negotiations ought to be through that association as opposed to the Ontario Pharmacists' Association.

Mr. Bernstein: To be strictly accurate, the point the OHA was making was that the negotiations in respect of hospital pharmacies should not be conducted by the OPA. That exception was made in our provision for negotiations.

Hon. Mr. Elston: They wished it to be within their association, which I think is a fair request. Therefore, we are making an amendment on that. Those are the new amendments since we were here.

Mr. Chairman: Perhaps I can suggest the following as a pattern for procedure and see if you are all willing to go for it. We will take Bill 54 first. So that we are absolutely clear on it, I will read out the wording in the left-hand column. If there is any concern about the meaning of it--there should not be because we have had hearings on it for months and months; I would rather we did not have much of a discussion on it--or if there is a proposed amendment, it should be put at that time so we can have an exact record of it. It may be that you will wish to change the odd word from things you have already put forward. That can happen at any time.

We would accept a government amendment first, then a Conservative amendment, and then an NDP amendment in that order. We would have whoever moves the amendment make an explanation of its effect and have discussion of that amendment. Obviously, if there is an amendment to an amendment, we would move to the discussion of the amendment to the amendment, etc. If there is a need for more information or discussion with various groups, among the committee or whatever, then a motion to table would be in order or a motion to stand down, whichever you wish. A motion to stand down might be easier so we can put it off until later on in our discussions of clause-by-clause and come back to it. Is that acceptable to everybody?

We are proceeding with Bill 54, the Ontario Drug Benefit Act, 1985. Does everybody have the compilation that was produced by Mr. Nigro? The reading of the original act goes as follows:

"An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on behalf of Specified Classes of Persons for the Dispensing of Specified Drugs. Her Majesty, by and with the advice and consent of the

Legislative Assembly of the Province of Ontario, enacts as follows."

Title agreed to.

On section 1:

Mr. Chairman: This is what we will be dealing with. "In this act, 'designated' means designated by the regulations; 'drug' means a drug as defined in clause 113(1)(d) of the Health Disciplines Act; 'inspector' means a person appointed under section 9; 'listed drug' means a drug designated as a listed drug."

Mr. Bernstein: That is right.

Hon. Mr. Elston: As I understand it, we now go on to the proposed amendments.

Mr. Chairman: If there is any change in the wording of a proposed amendment, whether it is a government amendment or one of the opposition party amendments, please indicate. I will read out that which is here and we will consider it as moved. If you have any concerns with that, the movers can indicate whether there is any subsequent change.

The proposed amendment would delete "listed drug" and substitute therefor: "'listed drug product' means a drug or combination of drugs identified by a specific product name or manufacturer and designated as a listed drug product." That is moved by Mr. Keycraft. Is there discussion of the amendment? If not, we can take the vote on that amendment.

10:50 a.m.

Mr. Davis: Mr. Chairman, you had better help us.

Mr. Chairman: Okay.

Mr. Jackson: There are a lot of new members on this committee.

Mr. Davis: If you support that amendment by Mr. Keycraft, what happens to the other amendments that impinge on it? For example, the official opposition's amendment is a little different from this one. What do we do? Do we move an amendment to that?

Mr. Chairman: It would work as follows: If you choose, you can move an amendment to the government's amendment, which would replace it with your amendment. We would first deal with that amendment to replace the amendment. Then we would go back to the amendment if your amendment were defeated. If yours were accepted, then because this is in addition to what the government is putting down, the government's amendment would fail. At this stage, if you wish, you would put your amendment as an amendment to the government's motion.

Mr. Jackson: I would like to move an amendment to the amendment.

Mr. Chairman: Mr. Jackson moves that the definition for "listed drug" be deleted and the following be substituted therefor:

"'listed drug' means a drug designated as a listed drug in the Ontario Drug Benefit Formulary

"(a) for which the manufacturer has provided to the minister a complete list of all ingredients therein (including vehicles, excipients, inert substances, colouring and flavouring materials, etc.; and

"(b) for which any change in the sourcing of the above ingredients must be reported by the manufacturer to the minister forthwith."

it is fair to say that the effect of this would be to replace the government's amendment rather than amending it. There is an explanatory note there, but perhaps you will expand on it.

Mr. Jackson: It is to make it clear that the listed drug would have to be contained in the listed drug formulary and details of the ingredients of the drug and changes thereto would have to be provided to the ministry.

Mr. Chairman: Is there any discussion of the amendment?

Mr. D. S. Cooke: If possible, in dealing with these we are going to have to get some reaction from the ministry as to how workable they are. Perhaps the official opposition can explain to us not just the explanatory note, but also the reason behind the amendment.

Mr. Chairman: That is probably wise for all amendments. Why do I not take further explanation of the reasons behind the Conservative motion from Mr. Leluk and then we will ask for a response from the ministry?

Mr. Leluk: During the hearings, we heard from a number of witnesses who were concerned that at present it is not required that the vehicles, excipients and various inert substances in various drug products be listed. We heard about numerous adverse drug reactions to products. We heard concerns about the sourcing of the various ingredients and it was felt these substances should be listed for pharmacists to see; they should be available as information.

It was also felt that if the manufacturer from time to time has different sourceings of these materials, the ministry or minister should be notified of the changes in the sourcing. The listing of the drug in the ODB formulary was included because when we talk about a drug designated as a "listed drug," where is it listed? We have a drug formulary; it should be specifically set out that it is a listed drug in the Ontario Drug Benefit Formulary. I do not have anything further to add. Perhaps some of our other members do.

Mr. Chairman: They can if it is necessary as we get into a discussion of it. Is there a response to the amendment from the ministry or from other members of the committee?

Hon. Mr. Elston: In terms of some of the items Mr. Leluk has brought up, these matters are part of the jurisdiction exercised by the federal authorities. They take a look at some of the listings of these items. I understand they are quite concerned about that type of thing. It gets into the safety aspect, which they deliberate on. If there are items of concern, they obviously contact our Drug Quality and Therapeutics Committee. There is no problem in getting information from one authority to another. I have some concern if we start impinging on what is being done by the health protection branch in Ottawa.

Mr. Leluk: It is the Drug Quality and Therapeutics Committee that

makes recommendations to you with respect to the interchangeability of certain drug products. We have heard from the Ontario Medical Association and others who have appeared before this committee of their concerns about reportings of numerous adverse drug reactions which, in many cases, have to do with the colouring substances or flavouring materials or what have you.

This kind of information should be available for all to see for consumer protection. As the minister responsible for the drug formulary, you should be advised of any changes of sourcing for these ingredients. I do not think we can say it should be left to the federal government and the people at that level to deal with because that information is going to be made available to the Drug Quality and Therapeutics Committee.

Mr. Davis: It is a listing. We are not asking the minister to do all the testing; we are just asking him to make a listing. It is information that is valuable to have. If we are going to respond to the various delegations that come before us and take seriously what they say, that addresses one of the concerns that was constantly placed before this committee.

Mr. Chairman: Mr. Burrows might make a couple of comments on this.

Mr. Burrows: There are a number of concerns. No one would disagree that the proposed information that would be provided is valuable information. In fact, the information that is listed here is available to the committee at present under the existing system. As to the requirement for a change in sourcing of the above ingredients, all of them may or may not be significant. For example, the change in sourcing of an active ingredient of the drug itself may be quite important, but a change in sourcing of a very minor component of the drug may be viewed by the scientific community as relatively insignificant. The comments we have heard about excipients relate more to idiosyncratic reactions. I think the concern was not so much about the sourcing of the excipients but the fact that they may or may not be in the product itself.

The problem with putting this kind of information into the act is that it is not effectively going to change the present practice in the case of (a), and (b) may be going further than is actually required by requiring information about the sourcing of all ingredients. It is quite relevant in the case of the active ingredient. The danger in enshrining these kinds of requirements in the act rather than the regulations is that it prohibits some flexibility. The body of scientific knowledge is constantly changing. What the committee requires to provide an acceptable recommendation to the minister changes from time to time. It would probably be better to serve the public by including the information in the regulations so that the list could be enlarged or diminished as circumstances required.

11 a.m.

The implication would be that while these may be more important, there could be something new that could be determined in the future to be more important than either of these requirements. There is concern about flexibility. For those reasons, we have some concern with the amendment as proposed. With respect to the flexibility, maybe Mr. Bernstein would like to comment on the legal implications.

Mr. Bernstein: Mr. Burrows has covered this pretty well. In addition, the government is proposing an amendment further on to section 11 in the power to make regulations. There will be power to make regulations

prescribing conditions to be met by products or manufacturers of products to have the products designated as "listed drug products." That is the place Mr. Burrows was referring to as providing for regulations.

It is not an objection to the principle behind what is being proposed here, that certain conditions should be met by manufacturers and certain information should be provided with respect to the products. It is a matter of what is the best way to ensure that the right information and only the right information is required.

Perhaps I might comment with respect to the form of it. At this time, we are talking about definitions of terms. This amendment goes beyond a mere definition and wishes to prescribe conditions for listing of products. As such, I suggest it would be appropriate in another location in the bill.

Mr. D. S. Cooke: I think this is the type of amendment or type of section of a bill that should be dealt with by regulation to give the government flexibility to react quickly to any change in circumstances. I do not see what is in this amendment that would change any of the deputations that were presented to this committee over the past number of weeks.

For example, I do not see that any of this information would educate consumers. As a consumer, I would not be any better educated by understanding all the ingredients in the prescriptions I have to buy. This is the kind of information provided to the ministry to make decisions as to whether a drug is interchangeable. Those sections of the bill should give regulation power. Therefore, I do not see the purpose of the amendment and will not support it.

Mr. Chairman: Are there other speakers on the amendment to the amendment?

Mr. Jackson: Is it possible to have the amendment split?

Mr. Chairman: I think so.

Mr. Jackson: I pose that for the reason that I sense there is some objection to (b) and possibly some to (a), but there are no adverse comments on the inclusion in the drug formulary. If that amendment is defeated, the bill will nowhere have any reference to the formulary.

Mr. Chairman: That could be moved subsequently, if you wish. There is no reason why it cannot be posed separately. It might be just as easy to have the vote on this amendment and then for you to move the other. Are the members amenable to splitting this? As I understand Mr. Jackson, we would take a vote on the first section ending at the word "formulary" and then deal with (a) and (b).

Hon. Mr. Elston: To understand better what is happening, perhaps I can make one comment. There is a withdrawal.

Mr. Chairman: No, there is a suggestion to split the vote. We would discuss it in two votes: One would be taken on the section that reads, "'listed drug' means a drug designated as a listed drug in the Ontario Drug Benefit Formulary." Then we would hold a separate vote on (a) and (b). That is Mr. Jackson's suggestion.

Mr. Ward: Mr. Chairman, my concern is that in that first paragraph

"listed drug" is actually contrary to the amendment proposed by the government, so why would you do that?

Mr. Chairman: In overall terms I have accepted it as being in order at the moment. I do not see how taking part of it at this stage and saying it is not in order is appropriate. We have accepted it as being in order up to this point and we have been debating it as if it is in order.

Hon. Mr. Elston: The way our program works, from time to time we add products to lists as they are proven to be a benefit and needed as a benefit. I am concerned this might exclude us from having the flexibility to add those benefits.

Mr. Jackson: You can clean that up in the regulation and say it is deemed to be in the formulary when you say so. There is no problem.

Hon. Mr. Elston: Mr. Jackson, I think you would have problems with me doing that. You are being so precise these days that it might cause problems. That is a real difficulty we have here. If we vote on "listed drug," as Mr. Ward said ours is "listed drug product" and there are and can be products with subgroups of drugs. My concern is that it would defeat the purpose of the initial amendment as proposed by the government.

Mr. Chairman: Is there anything further on the two subamendments to the amendment to the amendment? Let us deal with the first in terms of the vote on this matter. This would be Mr. Jackson's motion that "'listed drug' means a drug designated as a listed drug in the Ontario Drug Benefit Formulary." All those in favour of that subamendment? All those opposed? The motion is defeated. The second part of the amendment is points (a) and (b). I hope I do not have to reread it; it is there and understood. All those in favour of that section of the motion? All those opposed? It is defeated.

Motion negatived.

Mr. Chairman: This brings us back to discussion of the initial amendment proposed by Mr. Reyecraft. Is there any further discussion of the initial amendment?

All those in favour of Mr. Reyecraft's amendment will please say "aye."

All those opposed will please say "nay."

Motion agreed to.

Mr. Chairman: Congratulations, we have just done our first amendment to the act. Because we have passed that, legislative counsel asked me to raise the question whether the term "listed drug" should now be replaced by "listed drug product" if it should arise any place else within the legislation. That is just a housekeeping matter. Is that understood? Okay. You will correct me on it if I make a mistake as we go through this.

Hon. Mr. Elston: In fairness, we have passed "designated" but I see that in the list of items for amendments that were proposed by the member for York Mills (Miss Stephenson) she wanted to deal with the question of "designated." Since those amendments were filed, it would be unfair if we did not discuss that before we move on. I know we went by it but we should be sure

we deal with this by Dr. Stephenson on "designated." In fairness, since it has been filed we ought to deal with it.

Mr. Chairman: I gather this has just been distributed.

Hon. Mr. Elston: Is it brand new? Maybe it is a brand-new one; it just came to my desk.

Mr. Ward: It has a (c), which the one you just placed did not have. There was also another one.

Hon. Mr. Elston: I guess none of us have seen it and maybe I should not have raised it. Maybe we should have gone through, but it is here. It came with my Bill 54s. It does not have any number at the top but it does say section 1 and it has "designated."

Mr. Chairman: It must be Bill 54.

Hon. Mr. Elston: I expect it is Bill 54.

Mr. Leluk: I think that is Bill 55.

Hon. Mr. Elston: Okay. It arrived with all the other things for Bill 54. I apologize for undoing the procedure.

11:10 a.m.

Mr. Chairman: You had me a little worried for a second, minister. It is going to get worse. Let us move on. It is the same section: "'listed substance" means a substance, other than a drug, designated as listed substance." There is a proposed amendment from the official opposition. Would one of you like to read it into the record and move it. It is on page 2 of the compilation. I presume you wish to proceed with it, do you? Mr. Jackson or Mr. Leluk, do you wish to proceed with the amendment that is listed on page 2 of the compilation on Bill 54, starting off with "listed substance"?

Mr. Jackson: Yes.

Mr. Leluk: Yes, we do.

Mr. Chairman: Mr. Jackson moves that the words "'listed substance' means a substance, other than a drug, designated as a listed substance" in section 1 be struck out and the following substituted therefor:

"'listed substance' means a substance, other than a drug, designated as a listed substance in the Ontario Drug Benefit Formulary

"(a) for which the manufacturer has provided to the minister a complete list of all ingredients therein (including vehicles, excipients, inert substances, colouring and flavouring materials, etc.); and,

"(b) for which any change in the sourcing of any of the above ingredients must be reported by the manufacturer to the minister forthwith."

This, as the explanatory note puts it very clearly and succinctly, parallels the previous amendment proposed by the official opposition. We will have similar discussion. Is there any further comment that anyone would like to make on this section? If not, let us take the vote.

All those in favour of the motion by Mr. Jackson will please so indicate.

Those opposed?

Motion negatived.

Mr. Chairman: Are there any subsequent amendments to that section? This is specifically on "listed substance."

There being none, the next definition reads, "'minister' means the Minister of Health." I think we have a general consensus on that.

Mr. Davis: We would like to discuss that for a while.

Mr. Chairman: The next says, "'operator of a pharmacy' means,

"(a) the holder of a certificate of accreditation for the operation of a pharmacy under section 135 of the Health Disciplines Act, or

"(b) the operator of a pharmacy operated in or by a hospital that is a public hospital under the Public Hospitals Act."

Are there any amendments on that section? No?

To move on, "'physician' means a person licensed to engage in the practice of medicine under part III of the Health Disciplines Act."

Mr. Bernstein: I take it that if there are no amendments, these are approved, then.

Mr. Chairman: We will take a vote on the entire section as we go through.

The next definition is, "'prescription' means a direction from a person authorized to prescribe drugs within the scope of his or her practice of a health discipline directing the dispensing of a drug or mixture of drugs for a specified person."

The next says, "'regulations' means the regulations made under this act."

At this stage we would normally have a vote on that entire section, but there is a subsequent amendment proposed by the official opposition that would be an addition to that matter. Do you still wish to proceed with the amendment? I will ask this each time just in case there has been some change in amendments since this time.

Mr. Jackson moves that section 1 be amended by adding the following:

"any purchaser' does not include a hospital that is a public hospital under the Public Hospitals Act;

"best available price' means the lowest price available to any purchaser, from time to time, of a drug, listed drug or listed substance in a particular strength, in a particular dosage form, in a particular package size, plus a negotiated purchasing advantage as a percentage of the amount paid or payable;

"formulary' means the schedule of benefits available under the Ontario Drug Benefit Act;

"'price' means the selling price of a drug, registered in writing on an invoice, less the value of any price reduction granted by the manufacturer or his representative in the form of rebates, discounts, refunds, free goods or any other benefits of a like nature."

Mr. Jackson, may I suggest that we split this for discussion on each of the definitions and proceed in that fashion? Is there anything you would like to say on the question of "any purchaser"?

Mr. Jackson: No.

Mr. Ward: Can I get some clarification from Mr. Bernstein about how the act would apply to hospitals? It may remove the need for that particular amendment.

Mr. Bernstein: To understand the significance of the definition, the members of the committee may need some explanation of how these phrases turn up in the body of other proposed amendments. I assume that the fact that "any purchaser," just to take the first one as an example, excludes a public hospital is probably for the purpose of omitting from consideration of the best available price for any drug product the price paid for the product by a public hospital. It is not clear from this definition, but I assume that that is the point. The intention is to deal with prices paid by retail pharmacies or retail pharmacy chains but not by public hospitals.

Mr. Ward: That is my point. If that is the intent, does the amendment that was brought in at the beginning not meet that intent without having further impact on the bill?

Mr. Chairman: Can you be more precise? Do you mean the section we just read through, "the operator of a pharmacy operated in or by a hospital"?

Mr. Ward: I thought we had some discussion at the beginning to the effect that there were some amendments relating to public hospitals that took them away from many of the provisions of the legislation.

Mr. Bernstein: That is for Bill 55.

Mr. Ward: Is that intent better than by changing--oh, I am sorry.

Mr. Bernstein: That is Bill 55, not Bill 54. There is a minor change in Bill 54 respecting public hospitals. That is for the negotiation of the dispensing fee, but that is in only one respect. It is not the same matter that this amendment addresses.

Mr. Ward: My apologies.

Mr. Bernstein: I do not know, Mr. Chairman, whether you want me to go on and deal with the rest. Quite obviously, "best available price" is a definition of more than passing interest to this committee.

Mr. Chairman: We will have to come back to it, because I have said I would like to split this, if we could, for our consideration.

Mr. Bernstein: I see. Fine.

Mr. Chairman: Is there anything further on the first definition: "'any purchaser' does not include a hospital that is a public hospital under the Public Hospitals Act"?

Mr. D. S. Cooke: I am assuming that we need this section if we are going with best available price, obviously, to make sure that--

Mr. Bernstein: That is all. It is presumably the only reason you would want it.

Mr. Chairman: Did all members understand that? There was some conversation going on. Mr. Cooke's question to Mr. Bernstein was, if we moved to best available price from the acquisition price concept, would we need this definition in Bill 54, and the answer was in the affirmative. Any further discussion?

Hon. Mr. Elston: I certainly have concerns about this type of definition, which takes a look at package size and every other--

Mr. Chairman: You are going down farther, though. I am dealing at this point only with the first section: "'any purchaser' does not include a hospital that is a public hospital under the Public Hospitals Act." That is all I am dealing with.

Hon. Mr. Elston: Sorry.

Mr. Bernstein: The point I was trying to make on that was that the issue would seem to be whether, for the purpose of determining best available price, if and when that is accepted, the price paid by public hospitals should or should not be taken into consideration. It seems to have boiled down to that.

Hon. Mr. Elston: It might be of interest that if there is some move to use public hospitals as wholesalers or some desire to use them as distributors, this would prevent those groups of people from being included in arriving at the best available price. There is some indication on the street that there might be some arrangements like that in the offing, so this would be a very difficult exclusion to work with.

Mr. D. S. Cooke: What are the implications if we do not have this in and we go with best available price?

11:20 a.m.

Hon. Mr. Elston: We could perhaps indicate that here we could have, "does not include a hospital that is a public hospital under the Public Hospitals Act, except where that hospital acts as a distributor or wholesaler of drug products." We would have to work something in that would provide us with the ability to deal with situations in which hospitals were distributing beyond their own boundaries.

Mr. D. S. Cooke: Might I suggest, then, that the best thing to do with this until we determine the pricing mechanism is to stand down this section?

Mr. Chairman: Stand down the amendments, you mean?

Mr. D. S. Cooke: Right.

Mr. Chairman: There has been a suggestion that we stand down this amendment until we determine the pricing mechanism.

Mr. Keycraft: That would be until we have dealt with section 5?

Mr. Chairman: Yes. Presumably, until we determine whether it is best available price or the acquisition cost approach, it is being suggested that we would stand this down.

Hon. Mr. Elston: Acquisition cost is not in Bill 54.

Mr. Chairman: Is it not? That is right. Sorry.

Mr. Davis: On a point of clarification, Mr. Chairman: If you wait until section 5 to make your definition or the mechanism you are going to use, does it impact on other sections up to section 5?

Mr. Chairman: If it does, I think you should draw it to my attention--

Mr. Davis: I do not know.

Mr. Chairman: --and then again, we would stand those down and go back in the order of the definition back up through, if necessary.

Mr. Davis: All right; that is fair.

Mr. Chairman: My presumption on this would be that if we come to section 5 and we pass a certain approach in that section, we would then revert immediately to these earlier sections and clear them up so that we do not have too long a backlog before we get back to them.

Mr. Davis: We have stood down the whole--

Mr. Chairman: I am just seeing whether there is a consensus on this. There seems to be a consensus that we will hold the "any purchaser" definition until we have dealt with section 5. What about "best available price"? Does the same apply? It will be stood down as well.

The next one is the definition of "formulary," which "means the schedule of benefits available under the Ontario Drug Benefit Act." Is there any explanation for why you are putting this in?

Interjection.

Mr. Chairman: Thank you, Mr. Jackson. Is there any discussion of this section? "'Formulary' means the schedule of benefits available under the Ontario Drug Benefit Act."

Hon. Mr. Elston: I have no particular concern with this definition.

Mr. Bernstein: What purpose does it serve?

Mr. Jackson: Nowhere in the act is there any reference to the formulary.

Mr. Bernstein: That is because there is no need for a reference in the act to the formulary. It talks about the regulations. There is no mention in the Health Insurance Act of a schedule of benefits. The act talks about the making of regulations setting out amounts payable, and regulations would seem to be the single concept that serves the purpose. To have two concepts serving the same purpose would seem to be confusing. To call it regulations and then--

Mr. Jackson: The formulary is the regulations.

Interjections.

Mr. Jackson: We would still prefer to have some reference in the bills to the formulary.

Mr. Chairman: Do members understand the discussion?

Mr. Keycraft: Since the previous amendments that the opposition put forward to section 1 were defeated, and since those amendments made reference to the formulary repeatedly, I am curious to know whether there is any need now to include a definition of something to which reference is not going to be made in the bill.

Mr. Chairman: It is not out of order, because I cannot presume at this stage whether you are going to put items in the bill that will refer directly to the formulary. As it exists at this point, we do not have that. I agree that the normal process, of course, is to have a definition when a term comes up frequently within an act and you therefore have a definition for it. At this stage going through it I cannot predetermine that. You could, if you wish, stand it down until we find out whether we are going to deal with it; or you can just deal with it as you already have in the previous two amendments and decide that you do not think it is necessary. That is your choice.

Mr. Keycraft: I also note that the next definition, "price," refers to the previous section that we agreed would be stood down. Therefore, I assume that this next definition will be.

Mr. Chairman: I cannot tell, because I am not that far yet. We agreed that we would deal with these one at a time.

We have had discussion on "formulary." I think people understand the dichotomy here. If necessary later on, if you do vote against it this time and decide that there is a need for references to the formulary later on, you can always request that we add further amendments; I am not going to be strict on that. But if you wish to leave it in at the moment, you know why you are doing it, and that is that you are going to have further references to "formulary" within the act. If you believe this can be handled by regulation and the regulations equal the formulary, as was just said by somebody, then you will presumably vote against the definition.

All those in favour of Mr. Jackson's motion on the definition of "formulary" please so indicate.

Those opposed?

Motion negatived.

Mr. Chairman: I presume that Mr. Keycraft, although ahead of himself, is correct in what he is saying about "price" being stood down. Or do you want "price" to be put in at this stage? Do you want to stand it down until we deal with the other matters? Okay.

That is all I have at the moment on section 1. Does anyone else have further amendments that I am not aware of at this stage? If not, then we will return to section 1 when we have dealt with section 5.

On section 2:

Mr. Chairman: Section 2 says:

"(1) A person who is a member of a designated class of persons is an eligible person.

"(2) This act applies to persons entitled to receive drug benefits under the Family Benefits Act and the regulations under it as if those persons were eligible persons."

Is there any discussion of section 2?

Mr. D. S. Cooke: I suppose it would be out of order if we moved in section 2 that it applied to everyone in the province.

Mr. Chairman: I think it would be probably out of order.

Mr. Jackson: The Treasurer (Mr. Nixon)--

Mr. Chairman: It does. It has a certain resonance with the chair, but I would have to rule it out of order.

All those in favour of section 2 will please so indicate.

Those opposed?

Section 2 agreed to.

Hon. Mr. Elston: You should mark that as unanimous.

Mr. Chairman: Yes.

On section 3:

Mr. Chairman: Section 3 says: "This act applies in respect of the supplying of listed drugs for eligible persons unless that supplying is an insured service as defined in the Health Insurance Act."

The motion is by Mr. Ward. Will you read it out to save my voice?

Interjection: Change it to "drug products"?

Mr. Reycraft: Did we not agree that--

Hon. Mr. Elston: That has already been done.

Mr. Chairman: That has already been done.

Mr. Reycraft: All right.

Mr. Chairman: We are considering that done as we go through. It is now "drug products" rather than "drugs."

All those in favour of section 3 will please so indicate.

Section 3 agreed to.

On section 4:

Mr. Chairman: Subsection 4(1) says, "No operator of a pharmacy shall charge, or accept payment from, a person other than the minister in respect of supplying a listed drug for an eligible person pursuant to a prescription, unless the charge or payment is authorized by the regulations."

As we have indicated, "drug" again becomes "drug product." I have a motion that was proposed by Mr. Leluk.

Mr. Leluk moves that subsection 4(1) be amended by striking out the words "unless the charge or payment is authorized by the regulations" and substituting the following therefor: "unless the patient, after consultations with the pharmacist and prescribing physician, requests a more expensive drug or substance and is willing to pay the price difference between the list product and the requested product."

11:30 a.m.

Mr. Leluk: Basically, this is being proposed by our party to place the initiative on the patient, after consultation with the pharmacist, to request the more expensive product if he so chooses and to pay the difference between the two products. We feel this is in keeping with the person's freedom of choice of paying the difference if he so chooses. If he wants to be maintained on a particular brand of medication that he has been getting in the past.

Mr. Jackson: It is more palatable.

Mr. Leluk: Yes, it is more palatable.

Mr. Jackson: That was one of the arguments used.

Hon. Mr. Elston: This particular type of activity is now working in the system that we have and regulations will continue to allow people to request that particular product if they so wish. To put it in the act will not add anything to the program at all. In fact, regulations can prescribe that if you wish, but it is nice to have the legislation in a flexible nature. It will continue to allow that activity to carry on.

Mr. Keycraft: I have two questions. The minister has answered one of them. My concern is with the part that reads, "after consultations with the pharmacist and prescribing physician." Would the onus then be placed on the pharmacist to ensure that the patient has undertaken those consultations? If a patient requested the substitution without having the consultation with his physician, would the pharmacist not then be in error in charging or accepting payment?

Mr. Leluk: We are saying the choice should be with consumers. If they choose to opt for a particular brand of drug product, they should have that choice, even though it may not be the ministry's drug of choice.

Mr. Keycraft: Your amendment says that the patient can make the choice after consultations have been made. My question is, are you not then placing some onus on the pharmacist to make sure that a patient who requests a more expensive product has gone through that consultation stage with his physician?

Mr. Leluk: If the patient wants to pay the difference in cost between two drug products, there would be consultation. He would talk to the pharmacist. After that consultation takes place, he may choose to pay the difference in price. The initiative is left to the consumer to make that choice. It is the same thing as interchangeability in Bill 55.

Mr. Keycraft: I do not object to the principle of what you are proposing except that, in my opinion, we are putting something into legislation that is going to represent an undue burden to the pharmacist. That is, requiring that the consultation with the prescribing physician has taken place. That is what your amendment reads.

Mr. Leluk: It is not saying that the consultation is mandated on the pharmacist to consult with each and every customer that comes into his pharmacy. This is where a person has been maintained on a particular brand of drug and wants to continue using that particular drug. He has the opportunity to pay the difference in price between that product and the product that may be designated by the government as the product that should be used. We are saying that is in keeping with a person's freedom of choice to do so if he wants to.

Mr. D. S. Cooke: We all agree on the principle. The minister says it is working now. There is regulatory power in this section. I do not know what the problem is.

Mr. Leluk: What do you mean that it is working now?

Hon. Mr. Elston: They can choose now. They can request the more expensive drugs now.

Mr. Leluk: They can pay the difference in price?

Hon. Mr. Elston: Yes. That happens now.

Mr. Leluk: Then why is there a concern about having this put in legislation if it is something that is already happening?

Hon. Mr. Elston: There are several parts to what your amendment does. First of all, it excludes the flexibility that the regulations would authorize. For instance, a patient could agree to pay a delivery charge. We can authorize those types of things to occur under regulations and provide flexibility. It eliminates the flexibility that you are looking for and the ability to choose to pay without consultation with another professional, which is going to cause us difficulties.

Mr. Leluk: Are you saying it was going to be done without consultation?

Dr. Dyer: It can be done now.

Hon. Mr. Elston: It is working now.

Mr. Davis: One of the rationales for putting that in was that during the hearings it seemed the majority of people who are on the Ontario drug benefit plan were not aware that they can ask to pay the additional price for the drugs. If I am not mistaken, and I cannot recall, the question was asked. In the beginning, the first suggestion was that they could not do it. Then it was that they could do it. It was so confused.

This is saying to the consumer, "Because you have been on drug X for a while and want to keep it, if you want to pay the difference, you can keep it." That is freedom of choice. I remember the debate when we talked about consumer rights. We talked about the consumer's right to have access to the drug benefit plan. At that time, we were dealing with senior citizens and we did not talk about the right of the senior citizen who wished to pay more to obtain a brand-name drug or retain the drug that he was on. It is important that this be included in there--however the minister wants to include it--so that people are more aware that they can do it. They are not aware right now.

Hon. Mr. Elston: I appreciate Mr. Davis's support. It is preferable from my standpoint and from the standpoint of the ministry's management of this program that it be included in regulation form. I appreciate your support on that mode of maintaining it. Thank you very much.

Mr. Davis: I did not give you my support.

Hon. Mr. Elston: You said however I wanted to do it.

Mr. Jackson: We are hearing that it is current practice. Flexibility generally means that at some future point it can be changed one way or the other. At this point, all parties agree that this right should be extended to our citizens. If that is the case, the safest place for any right for a citizen is to be enshrined in an act and not in a regulation.

Therefore, with Mr. Leluk's indulgence and to cover off Mr. Keycraft's concern, I suggest that the words "after consultations with the pharmacist and prescribing physician" be deleted. As amended, it would read, "unless the patient requests a more expensive drug or substance and is willing to pay the price difference between the list product and the requested product." That is what the minister says is current practice. It would resolve the concerns raised by the Liberal Party. Then perhaps we could have our third unanimous vote.

Mr. Chairman: Let me check on procedure. Is that amenable to you, Mr. Leluk?

Mr. Leluk: Yes.

Mr. Chairman: Then that is a friendly amendment by the mover, which would now delete "after consultation with the pharmacist and prescribing physician." It is not a further amendment. It is just agreed to by the mover.

Hon. Mr. Elston: It is quite clear that even by doing that, it still does not provide us with the ability to have the regulations in place. "Unless a charge or payment is authorized by the regulations" goes much further than the narrow item that has just been set out. I am concerned that we have flexibility to allow things such as delivery charges and whatever other number of situations.

Mr. Jackson: You do anyway.

Hon. Mr. Elston: No. Under this proposed amendment, you would prevent us from passing regulations that would authorize those charges, Mr. Jackson.

Mr. Jackson: You can do that anyway and you know that.

Hon. Mr. Elston: No, you cannot, and it is quite clear that your amendment would prevent that flexibility from going on.

Mr. Jackson: No. This deals with the price of the drug, not the price of the delivery. You know that as well as I do.

Mr. Chairman: It is my understanding that the minister is saying that because of where this would come in the government section, that would then wipe out the possibility of regulations allowing things like delivery charges and that sort of thing to be covered.

Dr. Dyer: Ins and outs.

Hon. Mr. Elston: People who object to being part of the programs.

Mr. Chairman: It is not the principle of what is being stated here so much as what the placement of the amendment does in terms of the initial motion.

Hon. Mr. Elston: In preventing us from keeping the program running.

Mr. Davis: I have a question of clarification from the minister for my point. If you left in "unless the charge or payment is authorized by regulations" and then attached our amendment, would you have any problems with that and if so, why?

11:40 a.m.

Hon. Mr. Elston: Yes, because it does not add anything that would not be allowed currently and it would be almost a redundancy in that sense. That current operation would be able to be carried on in its entirety under subsection 4(1) without amendment.

Mr. Davis: I just read the act. The regulations are fuzzy.

Hon. Mr. Elston: I do not think this is actually a contract.

Mr. Davis: It is not a contract but it is still fuzzy. It is much clearer in what we placed here. What you are saying is that even if we left in "unless the charge or payment is authorized by the regulations," and attached the amendment to it, you are not happy with that amendment.

Hon. Mr. Elston: It just becomes a redundancy. It is much clearer and much cleaner the way it is there.

Mr. Chairman: Are there any further discussions? Do you all understand the differences here?

If so, we will take a vote on the amendment striking out the words "unless the charge or payment is authorized by the regulations" and substituting in its place "unless the patient requests a more expensive drug or substance and is willing to pay the price difference between the list product and the requested product."

All those in favour of Mr. Leluk's amendment will please say "aye."

All those opposed will please say "nay."

In my opinion the nays have it.

Motion negatived.

Mr. Chairman: Are there further amendments to subsection 4(1)? If not, we will take the vote on subsection 4(1):

"No operator of a pharmacy shall charge, or accept payment from, a person other than the minister in respect of supplying a listed drug (now drug product) for an eligible person pursuant to a prescription, unless the charge or payment is authorized by the regulations."

Is there any further debate on the main motion?

Mr. Bernier: Mr. Chairman, before we take the vote, could you read the regulation to us? Do you have it handy there?

Mr. Chairman: I gather this is from the current contract which exists.

Dr. Dyer: This is the participation agreement between the government and the pharmacists. The part that covers this says, "The pharmacy agrees to submit its plans to the ministry in respect to drugs and services provided to or on behalf of an eligible person and will not submit any account for any amount to those eligible persons in respect to drugs or services provided except,

"(a) for the difference between the index price of the interchangeable drug covered by the plan where the eligible person does not wish to accept the selection, having been advised by the pharmacy that an interchangeable pharmaceutical product is available free of charge;

"(b) for delivery charges where it is in accordance with the pharmacy's customary practice to levy an additional separate charge on such goods delivered, and where the eligible person is made aware that such charges are to be made; or

"(c) where the person elects, before having a prescription filled, to pay for the drug dispensed or to have the account rendered to another party for the drug dispensed, or has been advised by the pharmacy that the drug dispensed is available free of charge to such eligible person."

Mr. Bernier: Do they have a choice?

Dr. Dyer: Yes. He can submit an account except where that freedom of choice is exercised by the customer.

Mr. Davis: I do not think that policy or regulation agreement spells it out in the kind of definitive terms that our amendment would.

Dr. Dyer: It was drafted with pharmacy.

Mr. Davis: With all due respect, a number of people can draft all kinds of legislation and all kinds of legislation are drafted by individuals. When they are finished drafting it, it still may not be as clear as you can make it. Somehow we have to couch everything in very legal kinds of wording. That may be the intent, and I have no doubt it is, but most people out there who are on the Ontario drug benefit plan are not under the impression that

they can go and ask for a drug that costs more. I think that is a denial of the consumer's right to ask for that.

Mr. D. S. Cooke: What are you going to do? Are you going to circulate copies of your amendment or what?

Mr. Davis: Bullsnt.

Mr. Chairman: Mr. Cooke, he is right. Any further discussion on subsection 4(1)?

All those in favour of the amended subsection will please say "aye."

All those opposed will please say "nay."

In my opinion the ayes have it.

Motion agreed to.

On subsection 4(2):

Mr. Chairman: The subsection reads: "No physician shall charge, or accept payment from, a person other than the minister in respect of supplying a listed drug product for an eligible person, unless the charge or payment is authorized by the regulation."

Mr. Leluk moves that subsection 4(2) be amended by striking out the words "unless the charge or payment is authorized by the regulation" and substituting the following therefor: "unless, after consultation, the patient requests a more expensive drug or substance and is willing to pay the difference between the price of listed product and the requested product."

Mr. Leluk: This amendment parallels the proposed amendment to subsection 4(1). It applies to dispensing physicians. We feel this amendment is necessary for the same reasons as given before.

Mr. Chairman: This is parallel to the previous subsection. Is there any need for further discussion?

All those in favour of Mr. Leluk's amendment will please say "aye."

All those opposed will please say "nay."

In my opinion the nays have it.

Motion negatived.

On subsection 4(3):

Mr. Chairman: Mr. Ward moves that section 4 of the bill be amended by adding the following subsection:

"(3) Subsections (1) and (2) do not apply to an operator of a pharmacy or a physician who supplies a listed drug product for an eligible person without knowing or having reasonable grounds to believe that the person is an eligible person."

Is there an explanatory note, Mr. Ward?

Mr. Ward: Yes.

Mr. Chairman: We have heard that request a number of times from the deputations, as you probably all recall. Is there any discussion on subsection 3?

Mr. Jackson: Do we know whether the Ontario Pharmacists' Association has agreed to that?

Mr. Chairman: I do not have it down here and I know that the researcher is fairly clear on doing that. I see a bit of nodding which indicates that it is not as serious--

Hon. Mr. Elston: He is nodding off.

Mr. Chairman: There is some agreement with this subsection going in to protect pharmacists or physicians from prosecution.

Hon. Mr. Elston: I presume there is general agreement. All are in favour.

Mr. Chairman: We did not hear from them specifically, but we heard from sections of the OPA. The answer to your question is no, we have nothing definitive on this, Mr. Jackson. I can tell this just by my sense of things. Committee chairmen are supposed to be able to do it.

Is there any further discussion on subsection 3?

All those in favour will please say "aye."

All those opposed will please say "nay."

In my opinion the ayes have it.

Motion agreed to.

Section 4, as amended, agreed to.

Mr. Chairman: There is a request that we adjourn at noon, so we will not complete this. Let us get a little start on it and we will not have to repeat ourselves when we come back from lunch.

11:50 a.m.

On subsection 5(1):

Mr. Chairman: The subsection reads: "An operator of a pharmacy who submits to the minister a claim for payment in respect of supplying a listed drug for an eligible person pursuant to a prescription is entitled to be paid by the minister the amount provided for by the regulations."

Mr. Ward moves that subsection 5(1) of the bill be amended by inserting after the word "drug" in the third line the word "product" and by striking out "by the regulations" in the fourth and fifth lines and inserting in lieu thereof "under section 5a."

Is the motion understood? Mr. Ward, would you like to explain?

Mr. Ward: No.

Mr. Chairman: Mr. Bernstein would, even if you do not. Go ahead.

Mr. Ward: I think I understand the intent, but I do not want to risk it.

Mr. Bernstein: The motion would amend the current version in two respects. The first is simply a change from "listed drug" to "listed drug product." The second at the end of that subsection proposes that it read "under section 5a" rather than "by the regulations."

This ties in to certain additional amendments a bit further on that provide for the amount payable by the minister. The essence of it is that the government is proposing to include in the act a provision for mandatory negotiation of the dispensing fee to pharmacies other than hospital pharmacies. Because of that additional provision, it was necessary to make some changes, including a reference to section 5a. It really is in aid of the provision for mandatory negotiation of the dispensing fee for retail pharmacies.

Mr. Chairman: I do not think this has an impact on the other amendment, so we can deal with it.

Mr. Davis: It may have an impact on other amendments. I understood Mr. Bernstein to say it reflects on section 5a. Unless I am wrong, there are some amendments to section 5a proposed by the New Democratic Party, and I am not so sure it will not have other impacts.

Mr. Chairman: If you like, we can stand it down till we do that. On the other hand, in passing this, you can always understand what was passed or what the implications are for it when you deal with section 5a. I am in your hands. Would you like to stand that one down till we come to 5a?

Mr. Davis: When we pass something in a section such as this, I am always afraid the implications are that we cannot undo it because we have already made an amendment. I do not have a tremendously great legal mind, but I would like to stand it down. Once we deal with best available price or the other one, we will be able to see it much more clearly.

Mr. Chairman: There is general agreement we will stand it down till we do 5a.

Mr. Chairman: There is another amendment proposed by the official opposition. Would one of you like to read that into the record?

Mr. Leluk moves that the words "the amount" in subsection 5(1) be struck out and the following substituted therefor: "the best available price plus a dispensing fee as."

Just to be clear, the subsection would now read:

"An operator of a pharmacy who submits to the minister a claim for payment in respect of supplying a listed drug for an eligible person pursuant to a prescription is entitled to be paid by the minister the best available price plus a dispensing fee as provided for by the regulations."

Mr. Leluk: Right.

Mr. Chairman: Understood? First, an explanation by Mr. Leluk.

Mr. Leluk: We are proposing the best-available-price concept, which was recommended by Dean Gordon in his report, as the method of costing the drugs. I refer you to the definition, which we stood down.

It is "the lowest price available to any purchaser, from time to time, of a drug, listed drug or listed substance in a particular strength, in a particular dosage form, in a particular package size....plus a negotiated purchasing advantage as a percentage of the amount paid or payable." That is what we are recommending.

Mr. Chairman: We are now getting into the meat of the debate on the pricing approach, so probably this is an appropriate time to adjourn. Is it my understanding the committee will reconvene at two o'clock?

Mr. Jackson: Could you give us until 2:30? We have some work to do with these.

Mr. Chairman: Let me get a consensus. I am really concerned we are losing a lot of time. We are leaving earlier than we normally do and coming back later. Is there a consensus that we come back at 2:30 or two o'clock?

Mr. Jackson: We were provided with these only this morning.

Mr. Chairman: I do not have a consensus. Why not move a motion? Do you want a motion or shall we just come back at two?

Mr. Jackson moves that the committee reconvenes at 2:30.

Mr. Chairman: Presumably, we do not need discussion. We understand the reason involved, which is the desire to look at things more thoroughly.

Motion agreed to.

The committee recessed at 11:57 a.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ONTARIO DRUG BENEFIT ACT

PRESCRIPTION DRUG COST REGULATION ACT

WEDNESDAY, APRIL 16, 1986

. Afternoon Sitting



Mr. Chairman: One has happened in that extra copies have been given out by the clerk. The other is a question we have decided in the past. Unless I get a motion to reconsider it from somebody who has been opposed to it in the past, I do not think I am willing to accept it.

Mr. Offer: I cannot recall the exact date, but I understand that question with respect to standing was brought before this committee a while ago and was refused. Correct me if I am mistaken, Mr. Jackson, but your suggestion is not for a standing but a semi-standing. I think that question has been decided by the committee.

Mr. Leluk: The decision that was made was based on the request for a special status for the five interest groups to sit at the table and participate in the clause-by-clause discussion. Mr. Jackson has put forward that they not be allowed to speak. The purpose in having them here would be to answer questions for the sake of clarity. They would only speak if the chairman allowed it. That is quite a different situation, Mr. Offer.

Mr. Chairman: To clarify things, at present it is possible for members at any time to go and discuss any matters of concern with anyone in the audience. I have noticed some notes being passed and that is normal procedure. If you want to ask for points of clarification, you can still do it by posing the question to me and I will draw forward somebody who is here. It might be just as easy to do it that way as to have people sit there for the whole period and not be called. Why do we not leave it like that? If there is a consensus or a majority decision that we should ask for advice, I have no doubt people in the audience will be willing to come forward.

Mr. Jackson: I have a final question, Mr. Chairman. Have you had an opportunity to examine these amendments from the government? Are you aware of their placement and impact on subsequent sections within the bill? We are relying on you to ensure that any given clause does not contradict or offend another section of the bills or contradict some anticipated amendments further along somewhere. It is a serious question because we are relying on your good judgement. If that is the case, are you satisfied that you will be able to assist the committee in ensuring that will happen?

Mr. Chairman: The short answer is that I cannot guarantee that I can provide that kind of wisdom for you. I do not think I have ever shown it in the past and I am not sure I could now.

Mr. Jackson: It is not a mathematical matter.

2:40 p.m.

Mr. Chairman: Even though these amendments are being put forward to you, I have no guarantee at the moment that they will be tabled. That is why I ask you each time whether you are going to proceed. As soon as it is an official amendment, I will be prepared to make rulings or to be warned by some of you, as I have been already, that it may have an impact on another section. At that time, I will be glad to assist.

Let us go back to subsection 5(1). Mr. Leluk has moved an amendment and I have read it again. Is there further discussion on that subsection?

Mr. Ward: Mr. Chairman, if you will let me catch up for a moment, it seems to me we attempted to introduce an amendment just before the lunch break and it was suggested it be stood down.

Mr. Chairman: There was one before it that was stood down. The one you moved was stood down until we deal with 5a and then Mr. Leluk had just moved the one that begins, "Move that the words 'the amount' in subsection 5(1) be struck out and the following substituted therefor: the best available price plus a dispensing fee as" and then it will be completed by "as provided for by the regulations."

At the moment no one has made any suggestions to me, one way or another, on standing it down or dealing with it now. Mr. Leluk spoke briefly to the rationale behind the motion, but I have not had any assistance from the committee as to whether it would like this put over until we move a little farther on or whether you want it dealt with now. This is where we are at at the moment.

Is there any further discussion of the motion by Mr. Leluk?

Mr. Ward: In speaking against the motion, on page 25 under section 11, I think it establishes under the regulations the reference to the establishment of the price. Is the effect of this amendment to remove that from part of the regulations?

Mr. Chairman: My interpretation would be, yes, this would put it in the act and out of the regulations.

Mr. Ward: For the reasons that have been given on some of the other clauses, that removes the flexibility and effectiveness of the government's ability in being able to manage the plan and we will not support that.

Mr. D. S. Cooke: There have been so many conversations of which I have been part that I am a little lost. The amendment Mr. Leluk is putting forward is on the best available price. The only point is that if you follow the suggested amendments that we put forward, this amendment is not needed. The best available price can be put into the bill through the use of sections 5a and 5b and, I believe, section 11, in a much neater way while accomplishing exactly the same thing.

Mr. Chairman: There are two alternatives from your perspective: to vote against it and then move on or to defer this until later on and then come back and say that you dispense with it because you have already passed something else, and that was your choice. We can deal with it now and vote for or against it, understanding the implications of it, or we can wait until we have made these determinations under section 5a, as we are doing with some other things.

Mr. Jackson: We will stand it down until we can put it forward, depending on how we treat the other amendment.

Mr. Chairman: Is there general agreement it is stood down?

Vote stacked.

Mr. Chairman: We are now moving this, Mr. Ward.

Mr. Ward: Are we on subsection 5(1)?

Mr. Chairman: Yes.

Mr. Ward: I would like to put the motion that I was asked to stand down before lunch on subsection 5(1).

Mr. Chairman: Do you agree to put it down until we have dealt with section 5a?

Mr. Ward: Okay. Basically, all subsection 5(1) says is that the pricing is under 5a. If we are proceeding to do that through 5a, why would we not amend subsection 5(1) to say the pricing is indeed under 5a?

Mr. Chairman: Because you have essentially agreed, at this point, that you will determine whether or not you are going to do 5a. If you decide not to, then you have to go back, having passed something, referring to something, that should no longer be in the act. I think that is the reason you decided to do what you like to do.

Mr. Ward: It is all very clear to me.

Mr. Chairman: Mr. Cooke, the New Democratic Party has a motion as well, which is of similar import to the government motion, that is put down, on 5a. What do you wish to do?

Mr. D. S. Cooke: On 5a?

Mr. Chairman: At the bottom of page 6.

Mr. D. S. Cooke: They are covered by the government motion.

Mr. Chairman: Exactly, so as far as you are concerned, it is covered and it is already dealt with.

Mr. D. S. Cooke: That is right.

Mr. Chairman: Thank you.

We are withdrawing Mr. Cooke's motion which has the same effect as the government motion on subsection 5(1). It is redundant and we do not need it. We stood down the other until we got to 5a. We will come back to the old 5(1) after we have dealt with 5a. We are now at subsection 5(2): "The minister may pay an operator of a pharmacy an amount different from the amount provided for by the regulations in respect of a claim under subsection (1) if the minister has written agreement to that effect with the operator."

Ms. E. J. Smith: Where are we, Mr. Chairman?

Mr. Chairman: We are at the top of page 7, for those of you are using the sheet to go through, and it is subsection 5(2).

Ms. E. J. Smith: Thank you.

Mr. Chairman: There is a reference here to subsection (1) which we are standing down. I wonder if it would not be wise for us at this point to move ahead to section 5a--

Interjection: Good idea.

Mr. Chairman: --and then come back rather than us going through this over again. Is there agreement on that? The rest of these matters will all be

related one way or another so we might as well just go straight to 5a which is on page 9 of the combined sheets. We will begin at the bottom of page 8. There is a proposed government amendment, which I would request somebody from the Liberal Party move.

Mr. Ward moves that the bill be amended by adding thereto the following section:

"5a(1) The amount the minister shall pay under subsection 5(1) in respect of a listed drug is the sum of the fee referred to in subsection (2) and the amount provided for by the regulations.

"(2) The fee the minister shall pay to operators of pharmacies under subsection (1) for dispensing listed drugs for eligible persons shall be,

"(a) where the pharmacy is operated in a hospital approved as a public hospital under the Public Hospitals Act, the amount prescribed by the regulations; and

"(b) in all other cases, the amount determined under section 5b."

Mr. Chairman: The reason there may be some confusion at the moment is that is not what was written on page 8. It is on one of those supplementary pages that we have just received. The reason it is new is because we earlier on discussed the whole question about the exemption of the hospitals within the act.

The clerk has pointed out to me, and rightfully so, that because of the wording of this particular section, in the predominant number of cases, the amount determined will be under section 5b, and that we might more logically deal with 5b first. But because this is a specific exemption regarding the hospitals, I think it is something we can actually deal with on our own and understand what we are dealing with before we ever get to section 5b, if there is an agreement on that, it being a much more detailed section that we have to go through. Let us deal with this one which refers specifically to the public hospitals' exemption essentially.

Any explanation, Mr. Ward, of the motion you have put forward?

Mr. Ward: No, Mr. Chairman. It is quite clear. It just relates to the exemption of hospitals.

2:50 p.m.

Mr. Jackson: I would like to inquire from the ministry, because I do not have the former act in front of me, where there is a reference to a pharmacy and what is meant by a pharmacy in the context of subsection 5(a)? What constitutes a pharmacy?

Mr. Chairman: The phrase itself is "operator of a pharmacy." Where is the definition?

Hon. Mr. Elston: In the first section and there are two parts. It obviously relates to the Health Disciplines Act, which does in fact have definitions under certificates of accreditation and otherwise.

Mr. Jackson: That is what an operator of a pharmacy is, which really is the definition of a pharmacist. Where is there a definition of a pharmacy?

Mr. Chairman: There may be one under the Health Disciplines Act, but all we have here is the wording "the operators of pharmacies" and the definition of an operator of a pharmacy.

Mr. Jackson: I can see that but I have some concerns. From what we understand, a pharmacy and a hospital dispensary are two different things. I would like to know why we are implying that a pharmacy is in a public hospital within this act.

Mr. Bernstein: The definition of pharmacy in the Health Disciplines Act is a premises in which, or in part of which, prescriptions are compounded and dispensed for the public or drugs are sold by retail. Certainly, that definition covers those pharmacies within public hospitals that have obtained accreditation and are conducted as retail pharmacies. It may also apply in respect of the compounding of drugs for inpatients and outpatients. I am not sure whether the Ontario College of Pharmacists has an opinion on that. Whatever the operator, a pharmacy, as defined in Bill 54, was intended to cover the hospital that is a retail pharmacy and also the dispensary within the hospital that is providing drugs for outpatients.

Mr. Jackson: I do not want to vote on this until I am confident. I have had no feedback on this, since it is the first of the new package that has been forwarded. Is it possible through you, Mr. Chairman, to ask one of the groups or one individual here from the Ontario College of Pharmacists or from the Ontario Pharmacists' Association to respond to that? I am not comfortable that we are as much as implying that all hospital dispensaries can act as pharmacies.

Hon. Mr. Elston: No. That, in fact, is not what this says. If you take a look at it and read it, it clearly indicates that the fees for the purposes of those in-hospital pharmacies will be prescribed by regulations. For all others, it will be done under the mechanism in subsection 5(b), which includes working with OPA and dealing with the members of their association. It is quite clear that all this does is take the hospital pharmacy's fee out of the negotiating arrangement with OPA. It is not a total exemption of pharmacies from the act or anything; it just deals specifically with the fee. What I indicated early this morning was that the Ontario Hospital Association had requested that their pharmacy's fee be arranged between them and the ministry as opposed to them fitting in with the entire negotiating process with OPA for other than hospital pharmacies. It does nothing more than that. It talks about the fee.

Mr. Jackson: It would imply then, by your explanation, that any fee charged in a hospital dispensary would be negotiated between you and the OHA.

Hon. Mr. Elston: For drug benefit.

Mr. Jackson: For any fee.

Hon. Mr. Elston: This is the Ontario Drug Benefit Act and it says that for the purposes of this act, these sections apply.

Mr. Jackson: Is it possible to get at least one response--if there is no difficulty--from the OPA or the college?

Mr. Chairman: I am going to ask the committee members on this.

Mr. D. S. Cooke: If we are lucky we will have feedback from the groups on every section, because we are only beginning the complicated sections of the bill. May I ask a question of the minister?

Under the current situation, what is paid?

Hon. Mr. Elston: It is done separately. There is a special fee arrangement with the hospital pharmacies now. What this really does is establish a recognition of the current situation. We do negotiate separately with physicians who are dispensers, separately with pharmacists other than hospital pharmacies and separately with those who are pharmacists in hospitals with pharmacies right on the premises.

There are three different groups who we have talked to now and this is a recognition that this should continue to be the relationship. We deal with the OHA with respect to its facilities, the OPA with respect to all others dealing with pharmacists and with dispensing physicians.

Mr. D. S. Cooke: My amendment on this section has a further wrinkle to it and I am not quite sure how--I guess I am going to have to try to do an amendment to the government's amendment. I accept the exemption of the hospitals. I was suggesting that since we have one dispensing fee for the cash-paying market and one dispensing fee that is negotiated under ODB, what should be charged to ODB would be either the negotiated fee or the cash-paying fee, whichever is the lowest. In other words, if the posted cash-paying fee is less than what has been negotiated with the ODB, the pharmacists would have to charge the ODB that lesser amount.

Mr. Chairman: That could appropriately be moved as an amendment to this section or as another subsection--one of the two.

Mr. D. S. Cooke: I guess what it would be is an amendment to section 2(b). "In all other cases, the amount the minister shall pay to operators of pharmacies under subsection 1 for dispensing listed drugs for eligible persons shall be equal to the lesser of," and then my amendment being "(a) the amount to be determined under section 5b, or (b) the amount the operator charges under subsection 4(1) of the Prescription Drug Cost Regulation Act (usual and customary dispensing fee.)"

If there is a better way of wording that, I am sure legal counsel can do that.

Mr. Chairman: I understand the intent, Mr. Cooke, but I have a little difficulty at the moment working it in. It would follow after the words "the amount determined" in the government motion?

Mr. D. S. Cooke: That is right.

Mr. Chairman: Where would it come in? For other members, I gather this is on page 9 of the Liberal report document.

Mr. D. S. Cooke: It is my amendment that was circulated this morning to section 5a, which is my first amendment.

Mr. Chairman: I have a useful suggestion here from legal counsel, Mr. Cooke, that you can amend this to read as follows, looking at the government amendment and down to 2(b). It would read: "In all other cases, the lesser of (i) the amount determined under subsection 5(b) or (ii) which is your proposal, would be the cleanest way to do it in terms of the language."

Ms. Baldwin: This is what would go in subsection (2) here.

Mr. Chairman: Subsection (2) would be the amount the operator charges under subsection 4(1) of the Prescription Drug Cost Regulation Act--usual and customary dispensing fee.

Mr. D. S. Cooke: That is fine.

3 p.m.

Mr. Chairman: All members have it. Can I read it to you slowly. This is an amendment to the government amendment which was just given. Think of this being written underneath section 5a. It will now read:

"In all other cases, the lesser of (i) the amount determined under section 5b"--we are inserting the words "the lesser of (i)" before the amount. After 5b there would be the words "or the amount the operator charges under section 4(1) of the Prescription Drug Cost Regulation Act," and in parenthesis following that is the term "usual and and customary dispensing fee."

That would be the second alternative to the listing in section 5b, that is the detail.

Would you like to speak to that, Mr. Cooke?

Mr. D. S. Cooke: Just very briefly, the purpose of this is that we negotiate a dispensing fee with the OPA for the ODB program. Since, under Bill 55 we are giving the freedom to pharmacists to set their own dispensing fee and post it, it seems to me that if the dispensing fee being charged to the cash-paying market is less than that which has been negotiated with the OPA, the ODB plan should get the benefits of that lower dispensing fee as well. That is the purpose of the amendment.

Hon. Mr. Elston: The concern that we have here is the intent of this amendment, although laudible, will end up establishing effectively a floor price for "usual and customary" in the cash-paying market. It will make sure that whatever is negotiated under ODB, which is about 40 per cent of the Ontario market, will become the lowest usual and customary rate across the province. It will be the floor and then you will have "usual and customary" rising above that floor from there on, because the pharmacists will, in taking a look at what is available to them, ensure that the lesser is going to be the ODB fee. We consider it as restraining open market competition because it really acts as a disincentive to go below our negotiated fee.

After all, we are looking at providing certain services and provision of services to the people who participate in the ODB plan and we, as the government, are willing to consider a fee which includes certain items. To go further and prescribe that to be the floor, which is the essence of the result of this, would be a problem for consumers under Bill 55. That would not be helpful to consumer prices.

Mr. Chairman: Are there any further comments on this section?

Mr. D. S. Cooke: I do not pretend to be able to be able to foretell the future on these particular bills. However, it seems to me that if 60 per cent of the market is the cash-paying market, if competition exists and that is the purpose for posting the fee and allowing pharmacists to set their own fee in the cash-paying market, it would be hoped that this would also result in savings under the ODB program.

I understand the minister's argument but I am not sure I agree that is necessarily going to result in the dispensing fee for the ODB setting the floor. I would hope that the opposite would work, that ODB would reap some of the benefits from the competition in the cash-paying market.

Mr. Chairman: Is there further discussion on the amendment to the amendment?

Mr. Jackson: I wish to put forward an amendment to the amendment as well.

Hon. Mr. Elston: An amendment to the amendment?

Mr. Chairman: To Mr. Cooke's amendment, sorry, or the government's amendment?

Mr. Jackson: I wish to add an amendment in the manner in which you treated this. I wish to move the OPA recommendation as an opposition motion if you are going to deal with that in its entirety. It is on page 9. It substitutes "provided for in a formulary prescribed by the regulations" instead of "for by the regulations." Before you vote on that amendment and then on Mr. Ward's amendment--

Mr. Chairman: I am trying to think of the best ordering of this.

Mr. Jackson: I am seeking your advice. I do not want it to be all voted on and then I--

Mr. Chairman: This was acceptable as an amendment because I was able to amend the actual wording of the government's amendment on it.

Mr. Jackson: Mine would change it.

Mr. Chairman: It would be a new subsection virtually, would it not?

Mr. Jackson: No, it would amend Mr. Ward's proposed subsection 5a(1).

Mr. Chairman: Would it amend in any way what we are dealing with now, which is the amendment to subsection 5a(2)?

Mr. Jackson: No.

Mr. Chairman: Then let us deal with the amendment to subsection 5a(2), and then we will go back to subsection 5a(1), if that is all right. That would be the cleanest way of dealing with it.

Is there anything further on Mr. Cooke's amendment, if I might put it this way to make it easier, to Mr. Ward's proposed subsection 5a(2)?

I am going to separate subsection 5a(1) from subsection 5a(2) because we will be going back for another amendment on that.

Is there anything further?

Mr. Jackson moves that Mr. Ward's proposed subsection 5a(2) be amended to read:

"The fee the minister shall pay to operators of pharmacies under subsection 1 for dispensing listed drugs for eligible persons shall be,

"(a) where the pharmacy is operated in a hospital approved as a public hospital under the Public Hospitals Act, the amount prescribed by the regulations; and

"(b) in all other cases, the lesser of the amount

"(i) determined under section 5(b) or

"(ii) the amount the operator charges under subsection 4(1) of the Prescription Drug Cost Regulation Act (usual and customary dispensing fee)."

Motion agreed to.

Mr. Chairman: Shall we deal with subsection 5a(2) as amended? This is not just Mr. Cooke's amendment to it, but with subsection 5(2) as amended, both (a) and (b).

Motion agreed to.

Mr. Chairman: We will now go back to subsection 5a(1).

Mr. Jackson moves that the words "provided for by the regulations" in the proposed subsection 5a(1) be struck out and the following substituted therefor: "provided for in a formulary."

Mr. Davis: You should add "prescribed by the regulations."

Mr. Chairman: Do you wish to prescribe further? Mr. Jackson seemed to have cut that off. I just want to be clear about that.

Mr. Jackson: It is: "provided for in a formulary prescribed by the regulations." That full statement should be included.

Mr. Laughren: Can Mr. Jackson give us an explanation of why he feels that is needed? That is confusing.

3:10 p.m.

Mr. Jackson: The explanation is the same one I provided earlier today, that the reference to a formulary should somewhere find its way into this bill, and the regulations give the minister the power to add to and subtract from the formulary at any given time. In no way does that diminish his capacity to do that, but it is clear there should be a reference to a formulary at some point in this legislation.

Hon. Mr. Elston: It is quite clear that Mr. Jackson is no clearer now than he was when we voted on the question of definition of the formulary. The regulations comprise a formulary. This adds nothing to us and it is of no benefit to the legislation whatsoever. Quite realistically, it should not form part of this bill.

Mr. Jackson: Having met the Ontario Pharmacists' Association on several occasions, it is interesting that the minister is not familiar with that as one of its recommendations.

Mr. Davis: Perhaps the minister can clarify why it should not be included.

Mr. Chairman: Perhaps he will.

Hon. Mr. Elston: We do pass regulations. The regulations are there and they become very clear. I do not think there is any need to indicate a particular name or whatever for those groups of regulations.

Mr. Davis: Then can I ask it in a more positive sense? If it was put in, what would it do?

Hon. Mr. Elston: One of the things we like to see in our legislation is that it is clean and not full of redundancies. It is cleaner to have it the way it is. That is the positive statement.

Mr. Davis: I would like to try to ask the minister the question again. If it is included, what effect does that have upon the Minister of Health in carrying out the regulations? Does it enable you to do it better or does it restrict you? If so, how does it restrict you?

Hon. Mr. Elston: The best explanation is that the situation as set out now provides me with clear ability to put regulations. Having the authority to do that, this adds nothing to the legislation and clutters it up. We are quite happy with having the authority for regulations under the act.

Mr. Davis: Perhaps Dr. Dyer would like to try to answer this. If that is placed in, what will it do to the act? What problems will you have with it if it is placed in there?

Dr. Dyer: It can be confusing saying, "a formulary prescribed by the regulations." That would mean the regulations would have to prescribe a formulary rather than the regulations being the formulary. The regulations are the formulary. This talks about some formulary that is prescribed by the regulations. That is different.

For example, let us say that a formulary had multiple prices in it. Then the amount that would be paid on that would be each one of those prices because the formulary might indeed set out multiple prices. If it did, the way that section is worded now, it means the amount payable would be the amount that is set out in a formulary prescribed by the regulations. It does not provide for the minister to say, "We will pay the lowest amount that is prescribed in the regulations," as we do customarily now.

It can be misinterpreted in the sense that you are saying the amount we will pay will be that amount provided for in the formulary. In addition, it does not allow us to pay for exemptions to that. Under special authorizations where an individual has a no-sub prescription and dispenses the originator, the regulations provide for us to pay that full amount of the originated product. The amount for that exemption is not in a formulary. The formulary specifies an amount for a particular drug. It can add a great deal of confusion but no clarity to what we would be required to pay according to the act.

Mr. Chairman: That was a good attempt at some answers there.

Mr. Ward: The amendment is to insert the amount to be determined under-- Where does the formulary go?

Mr. Chairman: In the last line after the words "the amount."

Mr. Ward: We are at section 5?

Mr. Chairman: The last line of subsection 5a(1) says, "...the amount provided for by the regulations." That would now read, "...an amount provided for in a formulary prescribed by the regulations."

Mr. Ward: In effect, could not the amendment now make it mandatory for multiple listings of every product that was approved?

Mr. Chairman: You are asking Mr. Burrows?

Mr. Ward: That is the impact of this. In the Ontario Drug Benefit Formulary, every product that is an approved product will now have to be listed with a price.

Mr. Jackson: The only exception I took to what Dr. Dyer was saying is that we are not talking about the minister's right to set regulations as much as we are trying to suggest that the formulary is set by the Ministry of Health after consultation with the industry. It is shortsighted for us not to set out anywhere in this bill the fee the government is going to pay for the drug, and it is shortsighted not to tie it to the formulary. There is a distinction and I am nervous about any Minister of Health, whether Mr. Elston, his predecessors, the Premier (Mr. Peterson) or any other Minister of Health, asking me to trust him that he will cover everything off in the regulations.

Mr. Ward: I am trying to follow this down the path where I assume it is leading: That is, every product now has to be listed in the formulary. As we follow with amendments on best-available price, what we are in effect doing is legislating a price spread, rather than addressing the problems of the price spread that this whole exercise was geared towards. We are making it mandatory that there be a price spread under the formulary.

Mr. Jackson: You are five minutes early with your speech. We are not going to be getting to the best-available price or any of those other amendments for five minutes.

Mr. Ward: We should think about the multiple listing. What you are going to do is penalize suppliers if they buy at lower prices.

Mr. Chairman: It is hard for me to envisage the amendments that will be forthcoming or to presume that even those before us will necessarily be moved. It does not help us much to get down the road too far in this discussion. We have an amendment that we understand at the moment. I think you have your understanding of it, Mr. Ward, and you expressed your point of view on it. I allowed you to continue to express more fully what the inference of this will be later on.

Did the deputy want to ask a question?

Mr. Dyer: I am asking for clarification. This change would authorize us to pay only for drugs that were in a formulary. That is all. Currently, we pay for almost all drugs, whether in the formulary or not, under other circumstances. For example, if a drug is prescribed that is not in the formulary and the physician calls to get a special authorization to prescribe that drug as a benefit, a benefit can be granted on that drug for that

patient. That happens even though the drug does not appear in any formulary. Under this circumstance, if this is passed, we will not be able to provide payments for special authorizations.

Mr. Chairman: Have you full understanding that we are going from different perspectives on this? All right. Is it understood what the motion is? The final sentence would read "and the amount provided for in a formulary prescribed by the regulations." That would replace what exists at present.

Mr. Bernier: Can we have a recorded vote on this, please?

3:20 p.m.

The committee divided on Mr. Jackson's amendment to the motion on proposed subsection 5a(1), which was negatived on the following vote:

Ayes

Bernier, Davis, Jackson, Leluk.

Nays

Cooke, D. S., Laughren, Offer, Polsinelli, Smith, E. J., Ward.

Ayes 4; nays 6.

Mr. Chairman: Going back to the main motion, which is unamended, is there any further discussion of subsection 5a(1)? It now reads: "The amount the minister shall pay under subsection 5(1) in respect of a listed drug is the sum of the fee referred to in subsection 5(2) and the amount provided for by the regulations."

All those in favour? Those opposed?

Motion agreed to.

On section 5b:

Mr. Chairman: This would be page 10 on Albert's helpful memo. We have here the proposed amendment by Mr. Cooke, but we have also received a three page amendment from the ministry. I would suggest that we read it all into the record; then, if we wish to subdivide, we can do so. We will accept the government's motion first.

Mr. Davis: I am just a bit confused today. We have moved to a section now that is dealing, if I understand this, with what happens if there is not an agreement with pay, is that correct?

Mr. Chairman: As I understand what I have so far, and I have not had anything read to me yet, at this point in clause 5a(2)(b) it says that in the predominant number of cases that will be determined under section 5b. Now we are going to find out what 5b says will happen in the major number of cases, forgetting the exceptions.

Mr. Ward moves that the bill be amended by adding the following section:

"5b(1) In this section, 'association' means the Ontario Pharmacists Association.

"(2) The minister and the association may by agreement, with or without referring the matter to a fee negotiating committee, determine the fee the minister shall pay to operators of pharmacies under subsection 5a(2).

"(3) An agreement made under subsection 2 may establish classes of operators of pharmacies and provide for an amount payable in respect of each class.

"(4) There may be established from time to time as provided under subsection 6 a fee negotiating committee to be composed of,

"(a) three voting members appointed by the minister;

"(b) three voting members appointed by the association; and

"(c) a chairman, who shall not have a vote, to be appointed jointly by the minister and the association.

"(5) The minister and the association shall agree upon and share equally the remuneration and expenses of the chairman.

"(6) The minister or the association may, by notice in writing to the other, require that negotiation of the fee be conducted by a fee negotiating committee.

"(7) Not later than seven days after the notice has been received, the minister and the association shall each appoint three persons to serve as members of the fee negotiating committee and shall jointly appoint a chairman of the committee.

"(8) The committee shall begin its negotiations as soon as reasonably possible on a date to be named by the chairman.

"(9) If, after both sides on the committee have negotiated in good faith, the minister or the association believes that the committee's negotiations have reached an impasse, that person, by written notice to the chairman and the other person, may request that the chairman recommend a dispensing fee to the committee.

"(10) The chairman may obtain and use any relevant information that the chairman believes may be useful in formulating the recommendation.

"(11) The chairman shall recommend a dispensing fee to the committee as soon as reasonably possible after being requested to do so.

"(12) If more than seven days have passed from the date on which the chairman's recommendation was made to the committee, the minister or the Ontario Pharmacists Association may make it public after first giving the other person 48 hours written notice of the intention to do so.

"(13) The committee shall resume its negotiations within seven days after receiving the chairman's recommendation.

"(14) If, at any time in the negotiating process, a majority of the committee, including at least two persons appointed by the minister and at least two persons appointed by the Ontario Pharmacists' Association, agree on the appropriate fee, the chairman on behalf of the committee shall submit that

fee to the minister and to the Ontario Pharmacists' Association as the committee's recommendation.

"(15) The minister and the Ontario Pharmacists' Association shall notify each other in writing of their acceptance or rejection of the committee's recommendation within seven days after receiving it.

"(16) If, after both sides on the committee have resumed negotiations in good faith, the minister or the Ontario Pharmacists' Association believes that the committee's negotiations have again reached an impasse, that person, by written notice to the chairman and the other person, may terminate the negotiations.

"(17) The minister and the association may enter into a written agreement respecting any aspect of the negotiation of the dispensing fee, and in the event of a conflict between a provision of the agreement and a provision of this section, the agreement prevails.

"(18) The fee for the purpose of subsection 5a(2) shall be,

"(a) if the minister and the association both accept the committee's recommendation, the amount recommended;

"(b) if the minister and the association otherwise agree to a fee, the amount agreed upon; and

"(c) in all other cases, the amount provided for by the regulations."

Mr. Ward, would you like to speak to the section or would someone from the ministry like to speak to the section?

Hon. Mr. Elston: This provides a mechanism by which there will be a formal structure for coming to a decision with respect to fees. It also provides something that is quite helpful; that is, the opportunity to make public the deliberations that have been held and the available information on which the fee is to be based. If there is a dispute involving a group which is providing a service and a group which is paying for it, it is important that the public, which is footing the entire bill, be made aware of exactly what facts are pertinent to the discussions.

That is why the chairman is to be independent, and why it is important for us that the process be extremely open and the facts be on the table. In many ways this is a key item for all of us, so we will know exactly what guidelines are put in place in terms of coming to a decision with respect to a fee. It becomes much more critically important now because it appears that the Ontario drug benefit plan fee will become the floor for the cash-paying market as well. It is far more important for the consumers of this province to know all the ramifications of the deliberations.

You will note this mechanism provides that it is not a simple majority of the people involved with respect to the committee work. It requires a majority of the two components of the committee to come to an agreement. In addition, if there is an opportunity to come to an agreement between OPA and the government, then the agreement can take precedence, and the matter having been resolved satisfactorily does not have to go through this process. This provides us with several options to have an opportunity to come to a consensus. However, if there is not consensus the independent chairman, after

having made his recommendations, is quite at liberty to provide for all the taxpayers of the province to see the bounds upon which any discussions were held and how his recommendation was made.

That is a very good and open process so the people know what in effect takes place during these deliberations and the types of weighty matters that come before him as an independent chairman who is helping to look out for the needs of the taxpayers and those in the association. It is a balanced approach and one which is similar to that which is now used in negotiating with the Ontario Medical Association, one which the members heard not long ago was a workable one. Having it very open for all of us to analyse would help the entire public understand exactly what it is that these discussions entail.

3:30 p.m.

Mr. Chairman: It certainly eases my mind a lot to know that. Are there any questions or comments on these sections?

Mr. Davis: I am glad that it will be as successful as negotiating with the doctors. I am just thrilled.

Mr. Chairman: How do you wish to proceed with this?

Mr. D. S. Cooke: I would like to ask a question first. The amendment the minister is proposing is substantially better than the original bill but why did the minister not take the final step in the amendment to what the arguments are against putting in an amendment on actual binding arbitration? If they cannot come to a negotiated settlement, what are the negative sides of third-party intervention?

Hon. Mr. Elston: The question of binding arbitration is one which other professions and government have come to see as not being conducive to coming to a consensus-type agreement. For our purposes that is an important aspect of this mechanism and it encourages that type of serious discussion all of us must have. Through this mechanism we also make it a much more open process and for that reason this is preferable to getting into a binding arbitrated settlement. This provides some of the aspects of the immediacy of the need to go with a consensus because the chairperson of this committee has the authority to be public and make recommendations from his reading of all of the deliberations. That is a mechanism that provides the spur to get on with discussions.

The outlet valve is section 17. If you can come to an agreement, this mechanism does not have to operate. That really puts us into a pressure situation where you get together for discussion and come to agreement. There is where the spur is and it is a different type of spur than a binding mechanism.

Mr. Chairman: Is there further discussion?

It seems to me this is all of a piece as it were. It is one specific approach but it is also possible to amend portions of it if members would like to. Why do we not continue to discuss it as a whole at this stage and see what comes from it.

Mr. Jackson: I introduced a motion to share our concern. I am having great difficulty with the recommended motion in its current form because it

provides no protection or remedies under the Arbitrations Act. It is clear the government would prefer we not introduce a sense of finality or resolution to it. However, we have seen the New Democratic Party motion and we are under the impression that would be introduced. We find aspects of that far more acceptable than we do the government's. We also have tabled section 13, which will be placed in motion, and which impacts this as well.

I do not know how we are to deal with all of that but I would love to have the Liberal motion stood down in order to deal with the other two.

Mr. Chairman: As you know, it would only be possible with the concurrence of the governing party. I have to recognize the government motion first. Even if yours were numbered lower, at this stage, I would have to recognize this one first unless it was withdrawn by the mover at this stage.

Mr. D. S. Cooke: This section of the legislation is something that I have not given just a short bit of thought to. There has been a lot of time spent on many sections of these bills and this is certainly one of the major sections of debate over the past months.

One of the difficulties I have with the whole process is that both major parties which have been involved in this whole set of negotiations in eventually coming to Bills 54 and 55, and the debate after, have clearly indicated that there is not a lot of trust on either side.

If we are to make Bills 54 and 55 work, there has to be a different attitude. When these bills are given royal assent and become law in this province, there has to be a different attitude. If it is going to work, both parties are going to have to go into discussions and negotiations on a dispensing fee with the feeling that they are equals and that they are going to be fair to one another. The amendment that the government has presented to us comes a long way towards accepting the fact that there have to be fair and mandatory negotiations and that the parties have to deal with each other in a fair manner.

I do see some drawbacks to arbitration. I have seen it in the municipal sector. I have seen it as a former school board trustee. I have especially seen it in the field where there is automatic access to arbitration. Maybe I am being very naive, not only on this section but on other sections of the bill as well. On balance, I would like to give the best consideration to both the ministry and the Ontario Pharmacists' Association and hope they are both going to go in and negotiate a fair dispensing fee.

This process makes it very clear that if either side does not negotiate in good faith, the public is going to know about it, the membership of the OPA is going to know about it and all members of the Legislature are going to know about it. Through us, and through the making of the reports public, the public in general will be aware of it. I hope that will act as a motivator for both the ministry and the OPA to negotiate and bargain in good faith.

With that in mind, I will be supporting the government amendment and will not be moving my amendment.

Mr. Davis: You sold your soul out.

Mr. Chairman: I am not going to respond to that.

Mr. Leluk: I am surprised to hear Mr. Cooke's support for the government amendment in view of the fact that philosophically his party supports arbitration in matters where an impasse is reached between two negotiating parties.

Mr. Laughren: Be more specific.

Mr. Leluk: I will be more specific.

Our party does not support the amendment and I want to put that very strongly on the record. The pharmacists who appeared before this committee, over the past five months, have indicated very strongly that they need this protection in their negotiations with the ministry. When we talk about negotiations in good faith, there certainly have not been any negotiations at all. There has been no discussion of professional or dispensing fee between the ministry and the OPA.

The pharmacists feel they need this protection and our party would have preferred to see that the minister, when requested in writing, when the parties had reached an impasse in discussions or negotiations, would have possibly referred the matter in dispute to a three-member panel of arbitrators to conduct an arbitration pursuant to the Arbitrations Act. If after 60 days from the commencement of the negotiations an agreement had not been reached, the matters then remaining in dispute should be referred by the Minister of Health to a three-member panel of arbitrators to conduct an arbitration pursuant to the act.

We, as a party, will not support this amendment.

Mr. Jackson: I am quite concerned and somewhat bewildered at this 11th-hour conversion on a matter of so much importance to anyone who would propose to seek compensation in any form from the government of Ontario. It was only yesterday that the government was accused of acting in bad faith on Bill 94. Those accusations came from the NDP. Yet today I understand that they are given support because they are worthy of so much trust. I assume that has to do with odd days and even days. Certainly, Mr. Cooke is quite aware of what odd days are all about.

3:40 p.m.

Mr. Leluk: It is like odd fellows.

Mr. Jackson: What bothers me in this instance is that the one aspect of these two bills which virtually all deputants who came before this committee, whether they supported the government and, in essence, the bill, or whether they objected to the bill, agreed on was that big government did not have the right to carry that big a stick. They all agreed on that. Whether it was the trade unions, which Mr. Cooke ensured had full access to these hearings, whether it was the professional groups, which had full access to these committee hearings, whether it was the senior citizens, they all agreed that no government should have that much power to regulate compensation when the groups are totally at the mercy of the government.

This 11th-hour conversion is absolutely astounding and it is an 11th-hour conversion. It is fascinating, when we went through a public consultation process, to find that when there was one item that everybody agreed on, partisan politics became the most important consideration.

Mr. Chairman: Mr. Jackson, I warned you about having too long a lunch hour.

Mr. Leluk: Not long enough.

Mr. Jackson: Not long enough.

Mr. Laughren: I do not think the whole question of arbitration should come as a surprise to members of the committee. I do not know where Mr. Leluk was coming from when he said that we are always in support of arbitration. If members had seen another committee of this chamber debating a bill that deals with arbitration, they might have asked Mr. Leluk where the consistency is in his party with regard to do with first-contract legislation.

While I have not been here for the full debate on this bill, when I look at the bill in its original form and when I look at the amendment put forward by the minister on this section to resolve an impasse, I see a very substantial difference. While there has been some agonizing over the process, the agonizing has not been on just our part; it has been on the part of the minister and his staff as well. I have no trouble accepting this. My colleague, Mr. Cooke, put it well when he said he hoped there would be a change on the two sides. Given that, or assuming that happens, I do not see why this will not work. If they do not come to an agreement through that process, given the public aspect of it as well, then I am not sure there is much hope anyway. So, I speak in favour of the government amendment to this section.

Mr. Polsinelli: I was going to ask, seeing that the Conservative members of this committee have had an 11th-hour conversion and have seen the benefits of an arbitrated settlement where the parties have reached an impasse, whether they had reconsidered their position on Bill 65, which is currently before the standing committee on resources development.

Mr. Jackson: Maybe you will reconsider yours on Bill 94 and Bill 30.

Mr. Chairman: I will always remember Patrick Lawlor's admonition that "consistency is the hobgoblin of small minds." It is something I have looked at. It applies to all politicians.

Mr. Davis: As a person who was once engaged in a profession in which there were conversions, I remember only one dramatic one. It occurred on the road to Damascus and I think it occurred early in the morning, not at the noon hour.

Mr. Chairman: It is the time zone difference.

Mr. Davis: Right. First of all, I am a little disappointed in my NDP colleagues. I have found they have stood for the protection of individuals throughout this province, from their conception as the Co-operative Commonwealth Federation. I have followed the NDP with great interest for a number of other reasons. I have found they have always championed what they believed was fair and just. I find that at present they are abandoning some of the very principles upon which they were founded.

Mr. Laughren: Okay, now take the high road.

Mr. Davis: No, I am not going to take the high road.

Mr. Laughren: At least you are consistent.

Mr. Davis: I am going to be consistent. I do not even think I am going to have to debate the best available price because that has already been dealt with too.

Mr. Cooke, in the original section done by our clerk, very specifically spells out in subsection 5b(9) that the Arbitrations Act is to apply. The information we received this morning from Mr. Cooke and the NDP contains the Arbitrations Act. The accord party put its amendment on the docket here around two o'clock and it has been changed dramatically. I find it interesting that somehow we are expected to believe that a committee, weighted, in essence, for confrontation, is somehow going to be able to resolve issues. There will be three voting members appointed by the minister--one can only assume they will be neutral, caring people who have no political identity--and three voting members appointed by the association, with no one to break a tie.

Hon. Mr. Elston: They are supposed to be equal--

Mr. Davis: No, Mr. Elston, you will have your chance.

In effect, you have created a situation where in many cases you will have a confrontation with no resolution and the chairman will then be able to make the decision. You talk about trust and honesty. I am always reminded of that joke, "The money is in the bank, the cheque is in the mail and I am from the government and I am here to save you." One only has to look at what is happening with the negotiations between the Ministry of Health and the psychiatrists who work for the ministry to find how effective it is that there is no binding arbitration to which a party can take what it believes to be an injustice.

I find the suggestion the minister makes is not workable. In fact, I think it is really geared to create some confrontation. He should have given the chairman at least some responsibility to make a decision to intervene on one side or the other. He has kept the chairman neutral except when the chairman finally gets to make the decision as to which one of the proposals he is going to accept, either the one put forward by the representatives of the ministry--the voting members--or the one put forward by the pharmacy representatives. I find that I am having difficulty understanding my colleague from the NDP who moved so quickly to another position.

Mr. Laughren: You are a nonbeliever.

Mr. Davis: I am not a nonbeliever. I concur with my colleague, Mr. Leluk, that we cannot support this and that we will be making amendments to take it into the arbitration area where it should justly be.

Mr. Jackson: I have two questions. I was just reading this through for the first time when Mr. Ward presented it. There are no time lines. I know when I was participating in amendments to Bill 100, there was clear definition of time lines in each phase. I see a gap here. Maybe I am reading it incorrectly. In subsections 5b(7) and 5b(10), where is the time line from the coming together of the committee to the determination that there is an impasse. Is that open-ended or is there a--

Mr. Chairman: Who would like to respond? I am getting several murmurings.

Mr. Bernstein: If I understand your question correctly, there is no specified number of days. The concept is that both sides have negotiated it in good faith. That is in subsection 9. If, after that negotiation has taken place, for however long it must take place, either the minister or the association believes that the negotiations have reached an impasse, the party which believes that may request by written notice that the chairman carry out the recommendation process.

3:50 p.m.

Mr. Jackson: There is no specific time. It is at the decision of the chair based on when, in the opinion of the chair, there is an impasse.

Mr. Chairman: That is right.

Mr. Jackson: May I ask the minister for two items? Can you tell us what has been happening with the government's negotiation with the Ontario Pharmacists' Association rate. Could you also enlighten us as to the length of time your negotiations with the psychiatrists took before we were in a position to go to a third party resolution? Also, what was the nature of that third-party resolution?

I am asking the question because I am trying to seek out an example of an application of this model. If Mr. Cooke is going to rely on the grace and good judgement of the government, then I would like to at least examine the two known examples that our current Minister of Health--

Hon. Mr. Elston: Those are not examples of where this mechanism is in place. The example that I gave earlier involved the Ontario Medical Association. With respect to the psychiatrists, the mechanism was one which was developed in about 1980 or 1982 and required reference to a fact-finder by agreement between the two parties. That reference was done and comes under the auspices of some agreement made in the 1980s with a previous administration. The fact-finder then reports and there is a recommendation from the fact-finder.

With respect to the OPA, it is negotiation that is done under the auspices of the agreement. It is a participation agreement which calls for a fee and you sit down and you do that. The last time that was effectively carried through to conclusion was before the introduction of our last formulary in January of 1985. There have been some minor references to getting on with the discussion of fee now, during the time when we were prevented from putting a new formulary in place because of the litigation. As we get closer to setting new prices under the regulations, there is more impetus for us to get on with negotiating the fee again.

The court case has cleared the way under the old regime, as it were. Those two systems are not, of course, what is contemplated by this. This is a better mechanism; it makes the entire process much more open and the public will be more aware of what takes place in those discussions.

Mr. Jackson: I asked you for the two applications. I asked you what the track record had been. It is my understanding that the dispensing fee under the Ontario drug benefit plan has been under dispute for the last two-and-a-half to three years.

Hon. Mr. Elston: Since 1984, I think, was the last time.

Mr. Chairman: We should be clear on this, this is not the same mechanism.

Hon. Mr. Elston: This is not the same thing.

Mr. Chairman: I am allowing the question because it is relevant to the question of this as some sort of dispute-resolution mechanism. We should be clear that this is different.

Mr. Jackson: I do not see how this is different. I am trying to establish that there is a process in which coming to a final agreement has been protracted beyond what is reasonable. I fail to see anywhere in the amendment any substantive change over what the government has currently. Second, I specifically asked the minister to advise this committee of the changes which he undertook with government-employed psychiatrists.

Hon. Mr. Elston: I am sorry, but that is under the auspices of another group that is actually the employer of the psychiatrists. I happen to operate the facilities, but there is a mechanism now for ongoing discussion with the psychiatrists under the auspices of another authority in government.

Mr. Jackson: Does it lead to final binding arbitration?

Hon. Mr. Elston: That is what they are talking about now, as far as I understand, but it is not within my jurisdiction. I cannot speak to that specifically but I can tell you that this does provide us with a more formal mechanism on which to come to an agreement. This will put out in the open, before the public, the facts upon which we establish our fee. Quite honestly, although I tend to work with a mechanism which was started several years ago, this will provide us with a new start and help us all come to a resolution much more amicably.

Mr. Jackson: Has the minister presented this amendment to the OPA and the Ontario College of Pharmacists?

Hon. Mr. Elston: The other day.

Mr. Jackson: Since I have not the benefit of their response, could the minister enlighten us as to their response?

Hon. Mr. Elston: Yes, we did present it. The exact words perhaps are not quite there but the principle of the dispute mechanism was presented to them.

Mr. Jackson: What was their response?

Hon. Mr. Elston: It is clear that the college was not as interested in this part as was the OPA because the college has a different role. It is under Bill 55.

Mr. Jackson: What was the OPA's response to you?

Hon. Mr. Elston: The deputy tells me it was a very positive introduction.

Mr. Davis: They loved it.

Mr. Jackson: Would Dr. Dyer like to comment instead of nodding through Hansard?

Dr. Dyer: Their response was very positive as was the response to changing to an acceptable and proven method of fee-negotiation and dispute-resolution. They were positive in those terms.

Mr. Jackson: I suppose it would be impossible to bring the deputants forward to respond to that.

Mr. Chairman: I am in your hands, as a committee.

Mr. Jackson: This is the second time; I would like to request it. I have only done it on items that the minister introduced during the extended lunch.

Mr. Chairman: What is the committee's feeling on this?

Mr. D. S. Cooke: This is not terribly complicated. We know what the reaction is. We have been talking about this for four months.

Mr. Jackson: Do you concur with Dr. Dyer that there was a positive reaction?

Mr. D. S. Cooke: I was not involved in the meeting, but I know what the OPA wants in this particular section. The amendment goes a long way to meeting that. It does not go 100 per cent but neither does the bill, when it is amended with best available price in it, go anywhere near what the government wants, either.

Mr. Chairman: We do not have a consensus on changing our decision on standing.

Mr. Jackson: As long as the Liberals and NDP are aware of it, that is sufficient. Is that what I am told? That is your consensus?

Mr. Chairman: All I am saying is that I have no means of changing the decision about standing.

Mrs. E. J. Smith: In listening to Mr. Davis, he seemed to have a completely different interpretation of the role of chairman than I heard in the recommendation of the government. I would like to put on the record how I interpret the role of the chairman. The chairman is indeed appointed jointly, which indicates a certain mutual trust of both parties that the chairman is someone whose best judgement will be brought to bear on this. Mr. Davis then went on to say he is not--

Mr. Leluk: He does not have a vote.

Mrs. E. J. Smith: He was not given a vote, correct, and at one point, assuming an impasse is reached, he will then, to quote Mr. Davis, "Come down on one side or the other," which of course is not what is in here at all. It says the chairman will then make a recommendation. Of course it is to be assumed, since they picked with wisdom in the first place and agreed on the chairman, that he will try to interpret the best of what he has heard from both sides and make a recommendation that is suitable and acceptable. This, I think, is quite different from the interpretation that the chairman will come down on one side or the other. It is in this light that there is hope that this situation will work.

If he had to come down on one side or the other, I would join the members of the Conservative Party in saying that could not work. In fact, he is someone who is picked with high regard from both sides, who will listen to both sides and make a recommendation; then will come into place the time elements in which both have to negotiate. The public is allowed to hear his recommendation, and I assume his reasons for it, and that pressure of opinion and of the fairness of the chairman, who at this point should be well informed, comes to bear. He will not, as put forward by the government, come down on one side or the other.

Mr. Ward: In response to the suggestion that we invite parties up, I want to point out that the positions are enunciated on the sheets that legislative research has provided on this and every other amendment.

Mr. Davis: I would like the minister to explain to me subsection 5b(3), "An agreement made under subsection (2) may establish classes of operators of pharmacies and provide for an amount payable in respect of each class." I do not understand that.

Hon. Mr. Elston: From time to time it has come to our attention that there are small and large operators. I have suggested at one time or another that we would be prepared to look at compensating the small operator at a different rate than the larger operator if it were in a discussion situation and agreeable with the OPA.

Mr. Leluk: "Best available price" would take care of that problem.

Hon. Mr. Elston: There is also a possibility that somebody may get into a capitation program. It provides us with flexibility in terms of coming to an agreement on those items.

Mr. Davis: Do you do it now?

Hon. Mr. Elston: There is some capitation.

Mr. Davis: Could you give us some examples?

Hon. Mr. Elston: Nursing homes are a good example of capitation. At this point, we do not have a situation where we have a different fee level for different sizes of dispensing stores.

Mr. Davis: What do you mean by capitation?

Hon. Mr. Elston: I could have Mr. Burrows tell you the essence of a capitation scheme which might provide you with many of the answers before going into a series of questions, if that would be helpful.

Mr. Burrows: There are several different categories of reimbursement currently under the ODB program. There are hospital pharmacies, retail community pharmacies and dispensing physicians.

Within the retail pharmacy category, there are currently two pilot projects. They have been under way for several years. We are in the process now of assessing the findings we are getting from those projects. The reimbursement mechanism in those cases is on the basis of a capitation fee, in which the pharmacy is reimbursed a said amount per month, based on the number of occupied bed-days for that month. In return for that, they provide a guaranteed level of service.

If we do not have the flexibility in the legislation to enter into alternative reimbursement arrangements, it will preclude us from looking at innovative ways of dealing with the system. Perhaps it will preclude us from doing something in co-operation with the faculty of pharmacy in research development, for example, where the pharmacies involved could co-operatively join in on a venture with us. Without that flexibility, and locked into a one-payment mechanism, we are literally mandating a piecework system for the future when there may be better ways of compensating people for the professional services provided.

In the capitation project, it is important that it is not just three prescriptions per month per patient for X dollars. It is a certain amount of money, but in return, there is a listed and agreed to level of service that is provided. It includes recycling of unused medication, counselling, provision of pharmaceutical advice to the nursing staff in the home and in-service training. It usually includes a particular kind of delivery system or unit-dose system. There is a whole range of things. That concept is enshrined in the official reimbursement mechanism in the provinces of Manitoba and British Columbia. In co-operation with the profession of pharmacy, that may be a way to go for long-term services. We are not at that point yet but if we do not have that ability under the legislation, then that door would be closed to us.

Mr. Davis: Could you answer for me now by what mechanism or under what legislation authority you are doing what you are doing right now?

Mr. Burrows: There is a clause under the participation agreement which permits alternative reimbursement.

Mr. Davis: Now? Then why do you need this in the legislation if you can already do that under the participation clause?

Hon. Mr. Elston: Because there will not be one.

Mr. Burrows: There will not be a participation clause.

Mr. Chairman: The participation clause will not exist after this legislation is passed.

Hon. Mr. Elston: It will disappear.

Mr. Chairman: Now we have all-encompassing legislation to deal with these things. That is part of what we are doing here today.

Mr. Davis: Correct me if I am wrong, but if this committee decided it was going to use "best available price" as the mechanism for reimbursing pharmacists, that makes that section redundant, does it not?

Hon. Mr. Elston: No. This is fees.

Mr. Chairman: We are talking about fees rather than "best available price."

Mr. Davis: At some point, with this kind of legislation, could the minister decide to reimburse X dollars to a pharmacist in Wawa as compared to a pharmacist in Cornwall? Will it give you that kind of discretion?

Hon. Mr. Elston: I am not sure it would be geographic in nature but there could be a mechanism put in place distinguishing what would be known as a community pharmacist from a chain pharmacist. It might be based on volume of prescriptions on a monthly basis. That pharmacist might be compensated at a different rate than someone who has a higher volume.

Mr. Davis: Does that mean you would say to a pharmacist, "If you sell this amount of drugs, I will pay you this amount of money?"

Hon. Mr. Elston: It is not quite that way. You can set a threshold of perhaps 20,000 or 25,000 prescriptions per year. That volume would be paid at such and such a rate and those above it would be paid at another. Apparently, Saskatchewan and Quebec already have a mechanism like this.

Mr. Davis: Have you discussed this concept with the people involved?

Hon. Mr. Elston: I have set it out a couple of times. I notice a certain president is here. He was at a public meeting one night when I broached this during a speech. It gained his attention quite quickly.

Mr. Davis: So I would imagine. It is certainly an imaginative way.

Hon. Mr. Elston: That is just with respect to two-tiered dispensing. To be quite clear, it has not been a request of the OPA but it is a possibility. Some of the things we have heard when we have spoken with pharmacists is that there is a problem in keeping viable when there is a small volume. We are quite willing to explore those representations made by the association on behalf of its membership. This will provide us with that leeway and latitude.

Mr. Davis: I see the suggestion, in subsection 5b(3), of granting to you that opportunity down the road.

Hon. Mr. Elston: But it says an agreement made under subsection 5b(2). When it speaks about an agreement, obviously it is a question of two parties being ad idem. That means we will have to discuss it. If the OPA says it does not want to take a look at the question of two-tiered fees for the smaller pharmacy, obviously that is the position of the association and we cannot come to an agreement. If there is no agreement, subsection 5b(3) will not work.

Mr. Jackson: That is not how government works and it is not how the law works either. The minister should know better. Once there is a reference to separate classes of payment, in any form of legislation, you can make provision whether you get the agreement or not. All the agreement will establish is the amount but the minister has every right to establish separate classes. It is just how much you pay them--

Hon. Mr. Elston: If you do not have an agreement to begin with, subsection 5b(3) does not exist. It says an agreement made under subsection (2).

Mr. Jackson: Do you have any understanding with the association?

Hon. Mr. Elston: Right now, there is an understanding with respect to those two pilot projects. There is an agreement from that standpoint. I saw some people shaking their heads but there are two pilot projects being evaluated.

If we do not have an agreement, if the association says no dice, then there is no agreement under subsection 5b(2) and therefore there is no need for subsection 5b(3) in terms of the working of the mechanism. It is predicated on an agreement. If we do not agree, then subsection 5b(3) does not come into play. I cannot do it unilaterally. It is on the basis of an agreement.

4:10 p.m.

Mr. Jackson: The whole presentation of this bill is a process of unilateral action.

Hon. Mr. Elston: You are wrong again but you are welcome to your opinion.

Mr. Jackson: You did not consult before implementing the bill and there is nothing preventing you from doing it.

Mr. Chairman: The bill is not implemented, if I might say so. We are currently going through the process of deciding whether it will be.

Mr. Jackson: If I can have clarification on--

Mr. Chairman: Mr. Davis had the floor.

Mr. Jackson: All right.

Mr. Chairman: Do you have a further question, Mr. Davis?

Mr. Davis: Yes, I do. Would this allow the minister to say to a pharmacist that if he supplies--I think this is what they were saying in the project they have. If I am the local pharmacist in Port Carling and there is a seniors' nursing home there, would you enter into an agreement with me to supply all the services and drugs to that group?

Hon. Mr. Elston: That was the nature of the pilot projects which are now being evaluated; that is not what currently happens in the province at large. What quite clearly happens now is there is a fee paid for a prescription which is delivered to that nursing home. We have some interest in the college in mechanisms of supplying prescriptions to nursing homes and the way that is being done, but right now, if you have a prescription that you deliver to the home, you are paid on the basis of the fee that is negotiated under the Ontario drug benefit plan.

Mr. Chairman: Just to be clear on this. At the moment there is no legislation which covers this. Therefore, what the government decides to do is entirely possible for it to do at this stage. Subsections 5b(2) and (3) allow for the possibility of agreements to be reached between the association and the government which may or may not allow these kinds of things to take place. It is now in legislation requiring an agreement process rather than mandating the government to do as it chooses.

Hon. Mr. Elston: For the purposes of a little clarification may I read from the participation agreement? With respect to this item, the difference of reimbursement, it says, "The pharmacy serving drug benefit patients in nursing homes and homes for the aged may be reimbursed on a special basis to be determined by the minister on a recommendation of the

homes of Ontario drug supply committee, provided that until such time as the said recommendations have been given to the minister by this committee and have been discussed by the minister with the Ontario Pharmacists' Association and the Ontario College of Pharmacists, pharmacies serving nursing homes and homes for the aged under the Ontario drug benefit plan shall continue to be entitled to be reimbursed in the same manner that other claims under the plan by such pharmacies are paid."

That says everybody gets paid a fee for a patient prescription unless there is a recommendation and agreement on the basis of discussions with OPA for special reimbursement for nursing homes and homes for the aged.

Mr. Davis: I am trying to understand this. Subsection 5b(3) says, "An agreement made under subsection 2 may establish classes of operators of pharmacies and provide for an amount payable in respect of each class." I want to come back and ask another question about this, but what I heard the minister say is the minister and the association may, by agreement, with or without referring the matter to a fee negotiating committee, determine the fee the minister shall pay to operators of pharmacies under subsection 5a(2). In this section, when you are negotiating fee structures, if there is an impasse a chairperson can then make the determination of what that fee payment is going to be.

Hon. Mr. Elston: Can make a recommendation.

Mr. Davis: It is more than a recommendation because if there is an impasse, that chairperson then makes the recommendation to, I assume, yourself.

Mr. Bernstein: To the committee.

Mr. Davis: If the committee does not like it, where does it go?

Mr. Bernstein: The committee is required to resume negotiations, which is in subsection 13. Then if they still are at an impasse, the negotiations can be terminated by either party and the matter is back where it started, in the minister's hands.

Mr. Davis: That gives the minister the authority, as I understand it, to then set the fees unilaterally at that point. Am I correct?

Mr. Bernstein: The Lieutenant Governor in Council makes regulations providing for the fees.

Hon. Mr. Elston: There are two really critical items which you fail to consider. First, you would have to have a pharmacist who would be willing to participate; and, second, you would have to have a pharmacist who is participating within the bounds of the professional practice as administered by the College of Pharmacists--

Mr. Davis: I have lost you.

Hon. Mr. Elston: --with respect to how they serve patients.

Mr. Davis: No, I am somewhere else.

Hon. Mr. Elston: Where?

Mr. Davis: I know where I am. I am not sure many other people do, but I know where I am. I go through this process following your new recommendations, which we received at 12 o'clock on the road to Damascus. You go through a process in which you have an negotiating team. They reach an impasse. The chairman makes a recommendation. They debate the chairman's recommendation and there is still an impasse. If I heard Mr. Bernstein correctly, everything is then back in the minister's, or cabinet's, lap. I do not care which you use. It is your baby. You take it and you can unilaterally make a decision based on information that comes in, to set that fee schedule. Am I correct?

This section says there has to be an agreement in order for you to pay an operator of a pharmacy a different fee structure. In essence, what could happen, if we incorporate that into this bill, is that you can go through the process, reach a final impasse and, arbitrarily, with no agreement with the OPA, you can say, "I am going to introduce this section and, as of tomorrow, this gentleman is going to be paid this amount of money and that gentleman is going to be paid that amount of money." Am I correct?

Hon. Mr. Elston: At that stage you would have to have the agreement of the pharmacist to participate.

Mr. Davis: Do not confuse me.

Hon. Mr. Elston: You have to have the drug plan.

Mr. Chairman: I think this is, in fact, the answer.

Hon. Mr. Elston: The drug program requires that a pharmacist participates in it. If he says that he does not want to participate in the program then, obviously, I cannot do it. There has to be an agreement to participate in the program.

Mr. Davis: But you can introduce the legislation without the agreement of the OPA.

Hon. Mr. Elston: No we have to go through all of these things.

Mr. Davis: I have taken you all through that.

Hon. Mr. Elston: You have taken us all through it and you still do not understand it.

Mr. Davis: That may be. I have taken it to the end where now part of the agreement was not only the fees, but part of the deliberation was--

Mr. Chairman: Establishing different classes.

Mr. Davis: Establishing different classes. There is no agreement. You have gone through both sections. As Mr. Bernstein says, at that point the negotiations terminate and it is back on your desk. Can you then say, "Okay, I am going to set the fees and set the classes of operator." Can you do that?

Mr. Bernstein: Yes.

Mr. Davis: The answer is yes. Thank you.

Hon. Mr. Elston: It is permissible, except you cannot do it without having people who are willing participants in the program. That is the vital requirement, that whatever you do has people who are attracted to participate in the program.

Mr. Davis: If I could just respond to that. A number of pharmacists sat before us and told us that 60 or 70 per cent or even higher of their business was directly related to ODB. Right?

Hon. Mr. Elston: Yes.

Mr. Davis: If I was one of those pharmacists and you had this right and you got to the point, which Mr. Bernstein indicated you could do, where you say, "I am going to pay you a different structure," I then have two options. I either opt into your new structure or I close my pharmacy.

Hon. Mr. Elston: Here is the item which rides over all of that information. What puts everybody at this table, the three government representatives and the three OPA representatives, to work together to come to a consensus is the fact that all the information which is traded during the course of those discussions and negotiations is available for public consumption. The great thing about our democratic process--

Mr. Leluk: Before--

4:20 p.m.

Hon. Mr. Elston: No, it is made public. The chairman can do that, can make it available. In effect, either party may do that. The pharmacists can do it if they feel it is not going well. The government can do it if it does not feel it is going well. This whole process makes it very clear that one cannot be high-handed and fail to negotiate because that does determine where this whole process leads.

Mr. Davis: Let me ask one more question and then I will sit down. I understand what you are saying. Let me go back to Mr. Bernstein. I would like Mr. Bernstein to reaffirm what I think I heard him say. I think you said that given that point, having gone through the process, and everything is back on the minister's desk, he has the right to make a determination to establish classes of operators for pharmacies. Am I correct?

Mr. Bernstein: In effect, if it ever comes down to the point where the minister has to make a determination as to the payables by regulation, the power to make regulations would permit him to prescribe a different fee for a different class of operator. That gives the flexibility which was always sought with respect to the administration of the plan. It becomes a question of how the minister exercises that discretion.

Mr. Davis: But that is what you are telling him to do. Let me ask you the next question. If you take the pharmacist who sat here--I forget the gentleman's name--where 80 per cent of his business related to the ODB, and that was his business. The minister would then make that determination, which you said he can make, and that particular pharmacist then has an option to stay in as a person who now could be redesignated, and carry on a different business, or opt out altogether, but really not have a business. The minister does not have to have an agreement to do that. Is that correct?

Hon. Mr. Elston: We can designate it. Let me put two other pieces of information before you. This mechanism does work with respect to the OMA negotiations. There is pressure there and, of course, regulations are made. In fact, the scheduled benefits under the Ontario health insurance plan are as a result of this mechanism, and it does work. Mr. Jackson asked me for a situation where it has been tried. That is one of the situations where it has been tried.

The other thing is that it would be very difficult for a minister to set a set of fees which did not reflect the information, which is now public as a result of the process which has just taken place. So, in fairness, this is a very good way.

Mr. Davis: It should get you a lot of authority.

Mr. Chairman: If I might, we were doing so nicely. Before we finish some other matters today, it is fairly clear that what has been established is a mechanism which has a lot of moral suasion in it. It leaves final power within the ministry at the end because there is no binding arbitration. I think that is the point that was just very laboriously made, but maybe it has to be made in those kinds of terms. I would rather not continue with that discussion. That is very straightforward.

Mr. Polsinelli: My question has to do with subsection 2, which Mr. Davis has been trying to understand for the past 10 minutes, and on which I would also like an explanation.

Once a fee has been established, do you then establish different classes? My understanding of different classes is that they would be established to take care of exceptional situations where, perhaps, a slightly higher fee would have to be paid to those pharmacies. What is the explanation?

Hon. Mr. Elston: It is the contemplation that if you have a capitation system, when somebody is making a supply it is a different style. What you do then is rather than look at service to a particular patient, you look at service to a facility, more or less, in terms of the general volume which it is available to serve. It is very difficult to compare that vis-a-vis what might exist now. I am not even sure what the situation is, as compared to those two pilot projects. But it does determine that for the purposes of--

For example, the item which has been brought to my attention is that the small community pharmacy should perhaps be considered for a different level of reimbursement than a larger one. That is not fair. In fairness, that has not received endorsement from the OPA and has not been requested of us or anything. That is just an example. I do not want to get into talking about whether that could possibly happen, or might, because that obviously is going to be for these people to determine.

Mr. Bernier: This bill was introduced in the Legislature last November and here we are, at the 11th hour, in fact at noon hour today, getting the thrust of a three-page amendment. It is immoral of the government to thrust this on the committee at this late stage.

Mr. Laughren: You guys should have introduced it a lot earlier.

Mr. Bernier: During the hearings that I was at, there was a considerable amount of discussion. We had various interested groups sit at the

table with us and go through this piece of legislation clause by clause. That has not happened today. In view of the hour, and in view of the support of my colleague behind me, I think we should adjourn for the day. I know our caucus would like to meet with the OPA and get its input because it is obvious it has not had input into many parts of this bill. It has come as a bit of a surprise and, because this is a democracy, that is the way to go.

The committee adjourned at 4:26 p.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT

THURSDAY, APRIL 17, 1986

Morning Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Cooke, D. S. (Windsor-Riverside NDP)

Bernier, L. (Kenora PC)

Davis, W. C. (Scarborough Centre PC)

Jackson, C. (Burlington South PC)

Miller, G. I. (Haldimand-Norfolk L)

Orfer, S. (Mississauga North L)

Reycraft, D. R. (Middlesex L)

Stepnenson, B. M. (York Mills PC)

Swart, M. L. (Welland-Thorold NDP)

Ward, C. C. (Wentworth North L)

Substitutions:

Laughren, F. (Nickel Belt NDP) for Mr. Swart

Leluk, N. G. (York West PC) for Mr. Bernier

Clerk: Carrozza, F.

Staff:

Baldwin, E., Legislative Counsel

Nigro, A., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Health:

Elston, Hon. M. J., Minister of Health (Huron-Bruce L)

Dyer, Dr. A. E., Deputy Minister

Bernstein, D., Director, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, April 17, 1986

The committee met at 10:05 a.m. in room 151.

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT
(continued)

Consideration of Bill 54, An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs; and of Bill 55, An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs.

Mr. Chairman: We have a quorum, although we are missing several members and we do not have ministry staff here yet. We should at least proceed with the debate, which continues from yesterday.

Mr. Leluk, you said you had a point of order, but it has to wait until the--

Mr. Leluk: It will have to wait until the deputy minister arrives.

On section 5b:

Mr. Chairman: Fine. We can interrupt the discussion at that time. As we left off, you may recall; the discussion was on a government motion moved by Mr. Ward on section 5b. We had a fair amount of discussion on this. I recall that in ending yesterday Mr. Davis had completed his remarks, and then Mr. Bernier, in making his, moved the adjournment. We find ourselves back here this morning.

Is there further discussion on the motion by Mr. Ward, the three-page insertion of section 5b?

Mr. Leluk: The point of order I intended to raise this morning with the deputy minister is based on this section, and I would not want to see us vote on the section before we have had that discussion.

Mr. Chairman: The minister is here and so is Mr. Burrows.

Mr. Leluk: Can we find out from the minister whether he expects his deputy to be here shortly?

Hon. Mr. Elston: He likely will be here shortly. I know he is involved in some meetings.

Mr. Chairman: Is it a drafting question or a political question?

Mr. Leluk: It is a question regarding a statement that was made yesterday before this committee, and I would like to have some answers on the record before we vote on this section. I am not prepared to have our party vote until we have had a chance to raise the point of order.

Mr. Chairman: It is a matter raised by the deputy that you want clarified?

Mr. Leluk: Yes.

Mr. Jackson: Can we have the section re-read, Mr. Chairman? It would probably be appropriate, given that we are now going to have to vote on it.

Mr. Chairman: We do not have to vote on it now.

Mr. Davis: No. We could step it down.

Mr. Leluk: We are stepping it down until I have had the point of order.

Mr. Chairman: You may continue to discuss it.

Mr. Laughren: He is not suggesting that we adjourn, is he?

Mr. Leluk: No.

Mr. Chairman: I hope not, Mr. Laughren, because you are likely to vote in agreement.

Mr. Leluk: Not yet.

Mr. Davis: We may suggest it.

Mr. Chairman: I would prefer that that not be the motion forthcoming. The difficulty I have is that, if it is a point of information brought forward by the deputy representing the government, you can pose that to the minister or to other senior staff. If it is just something that happens to be the opinion of the deputy--

Mr. Leluk: It happens to deal with something that is in this section.

Mr. Chairman: I would hope so.

Mr. Leluk: It is a statement that was made yesterday by the deputy, on which I would like some clarification for the record before we proceed to vote on it. I would ask your indulgence, if I might.

Mr. Chairman: As you know, he works for the minister. You can pose it to the minister if you like.

Mr. Jackson: I have a question on this section that I did not get a chance to ask yesterday. Perhaps I can get a response.

10:10 a.m.

Mr. Chairman: Sure. Why do we not start with that and see if and when the deputy comes. All I can tell you is that I have no means of guaranteeing which government representatives are going to be here. The minister is here with the director of the program; they are two relatively senior people. To suggest that I should hold up the clause-by-clause discussion on this rather than ask for the accountability--

Mr. Leluk: We can go into a discussion.

Mr. Davis: Or we can stand it down.

Mr. Chairman: If there is agreement, we can do that as well. Mr. Jackson has a question.

Mr. Jackson: Yes. My question has to do with Mr. Ward's amendment to subsection 5b(18), dispensing fee. I am really not clear about what that means in clauses 5b(18)(a), (b) and (c). It looks like a multiple choice question to me, and I am just a little nervous. Mr. Ward, can you explain how that works?

Mr. Chairman: I understand from legal counsel that you may have put your finger on a problem. Instead of "and" in clause 5b(18)(b) it should be "or"? Is that what you want?

Mr. Jackson: Can we get the explanation, and then the government's amendment to the amendment to the amendment to the amendment, which has now been done a fourth time.

Mr. Chairman: As you have amended your own matters in the past, I accept those as friendly amendments without being amendments to amendments.

Mr. Jackson: We generally get them the second time.

Mr. Ward: I really would have thought this section would be self-explanatory. Notwithstanding that--

Mr. Chairman: Give it a try.

Mr. Ward: It clearly sets out that the fee established is that which is arrived at through the deliberations of that committee, or an amount agreed upon between the Ontario Pharmacists' Association and the ministry. In any other case it is an amount established through regulations.

Mr. Davis: Who establishes the regulations?

Mr. Ward: The government establishes the regulations.

Mr. Chairman: As I understand it, there have been some changes in the establishment of regulations under this act in the proposals that are coming forward. Is that not the case?

Mr. Ward: I do not know.

Mr. Chairman: We heard that earlier on. Usually it is the government's prerogative to establish regulations, but there has been some discussion about having some role for the college.

Dr. Dyer: Bill 55.

Mr. Chairman: In Bill 55, not in Bill 54. Thank you. It would be the government only, Mr. Jackson.

Mr. Jackson: Just so I understand it, you are saying that we assume the fee is up for negotiation and we assume it is first referred to the committee. If there is a clear recommendation, that becomes the fee. If there is no clear recommendation, it moves then-- It cannot be all three; it has to be in this order.

Mr. Chairman: Yes.

Mr. Jackson: Should it not be clause 5b(18)(a) "or" clause 5b(18)(b) "or" clause 5b(18)(c)?

Mr. Chairman: I will just ask the counsel for clarification. We have to replace the word "and" in clause 5b(18)(b). Do we need another "or" after clause 5b(18)(a)?

Ms. Baldwin: No.

Mr. Chairman: I gather we would need only delete the "and" at the end of clause 5b(18)(b) and replace it with the word "or," so that, as you say, it becomes clear these are mutually exclusive approaches.

Mr. Jackson: Okay. With regard to the line of questioning that Mr. Davis was pursuing yesterday with the minister on how the mechanism works, clause 5b(18)(c) ultimately shows that if there is no agreement, the minister sets the fee and that is it.

Mr. Chairman: That is right.

Mr. Jackson: That is understood.

Mr. Chairman: That is right. The only curtailment therein is the fact that there has been a public process so that people know what the debate has been, and that would obviously have some kind of impact on the minister. The minister would like to make a comment.

Hon. Mr. Elston: It is quite clear, even though there is a negotiated settlement, that the minister is the one who has the authority to set the regulations even now. We do it on the basis of an agreement that is arrived at. Quite honestly, I have to submit the regulations; the minister has to make the regulations. The regulations are passed after being recommended by the Minister of Health. That is the system now, and it has worked. This just happens to be a more formal structure to provide a more open process and a much longer determination for people to make, if they are not able to come to--

Mr. Jackson: It is clear that the Minister of Health wishes to regulate the fee. I understand that now.

Hon. Mr. Elston: And we do now.

Mr. Jackson: We understand that. We had prior presentations from deputants and from the New Democratic Party that we would provide more protection to the professional groups who were at the mercy of the government. There has been an 11th-hour conversion, and we are clearly aware of what has gone on.

Mr. Chairman: As I said at the close yesterday, we all understand the various positions. Mr. Leluk, the deputy is here. You have a question for him.

Mr. Leluk: On a point of order, Mr. Chairman: The deputy minister made a statement before this committee yesterday that the 11th-hour amendment to Bill 54, section 5b, dealing with an arbitration mechanism had been discussed with the Ontario Pharmacists' Association and that the reaction of the officials of the OPA to this proposal had been positive.

In talking with the officials of the Ontario Pharmacists' Association and the Ontario College of Pharmacists--this does not really come under the college's jurisdiction, but I talked to it as well--they told me there had been no discussion of the amendment that was introduced before this committee yesterday dealing with this arbitration mechanism. Would the deputy minister tell this committee when he met with the OPA and/or OCP, whom he spoke to and what the responses of the officials of these two bodies were?

Dr. Dyer: In the statement, if you refer to Hansard, I was really referring to a meeting with the college: the president of the college, the registrar of the college and associates of the college. In that context we discussed many things, many aspects. It was stated yesterday that while the specifics of this proposal, of course, were not taken up in depth with the college, the principles of this, plus other concepts, were discussed in terms of dispute resolution, etc., and those principles and the principles of whether the--many other things were discussed as well.

Mr. Leluk: In talking to Mr. Wensley, the registrar of the college, this morning, my understanding from him and from the president of the college was that this amendment dealing with an arbitration mechanism had not been discussed with them. Why would you discuss this with a body to which this does not pertain? Did you have discussions with the OPA on this or not?

Dr. Dyer: We discussed several things with the college. Among them were dispute resolutions. We did not discuss the specific wording of this particular proposal; no, we did not discuss that in depth with those groups. However, we discussed many things, and part of the discussion ranged around means of dispute resolution, including binding arbitration.

In those discussions it was my impression that at least the members in the group I was referring to yesterday, the members of the college, were positive about the suggestions we were talking about. They may have a different opinion of the outcome of those meetings, and they are entitled to that different opinion; but in my opinion, the responses to our suggestions were positive.

Mr. Leluk: Did you discuss this with the OPA?

Dr. Dyer: I did not discuss this with the OPA, nor did I say I had done so.

Mr. Leluk: How could you make the statement yesterday that the response was positive when you had not even discussed this?

Dr. Dyer: I did not make the statement that I had discussed this with the OPA.

Mr. Leluk: Did you advise your minister of whether you had discussed this with the Ontario Pharmacists' Association, which is the professional body dealing with matters of this type?

Dr. Dyer: No, we did not discuss that, nor did I make a statement yesterday that we had discussed it.

Mr. Leluk: I say to you that you specifically referred to discussions with the Ontario Pharmacists' Association yesterday, and I am advised of that.

Dr. Dyer: No, I did not. If you wish to get a copy of Hansard, I said our discussions with the college and the OPA. I said "they," meaning the college, were positive about the discussions in this regard.

Mr. Leluk: Can you answer my earlier question about the date of the meeting, whom you talked to and what the response of the group or groups was?

Mr. Ward: Point of order?

Mr. Leluk: I am on a point of order.

Mr. Chairman: We are currently on one--an extended one, I might say.

10:20 a.m.

Mr. Leluk: Just sit back and relax.

Mr. Ward: I am.

Mr. Chairman: I am not sure what the point of order is. You should have explained it.

Dr. Dyer: There were many meetings with both groups in the past, but the latest meeting was last Friday, as I recall. Last Friday we met with both the college and the OPA.

Hon. Mr. Elston: On the point of order, if Mr. Leluk is trying to indicate that a wrongful impression was left that the association was wholeheartedly behind this mechanism; I think it was quite clearly put by Mr. Cooke in a follow-up to exchanges earlier that we all understand that the Ontario Pharmacists' Association would far sooner have binding arbitration for every last scintilla of decision-making the government should have to manage this program. That was quite clearly made.

Mr. Leluk: Wait a minute.

Hon. Mr. Elston: No. That point was quite clearly made. We all understand that the preference of the OPA is towards binding arbitration.

Mr. Leluk: I am talking about you and your deputy misleading this committee.

Mr. Chairman: Order. That is unparliamentary, as you know, and you must withdraw it.

Mr. Leluk: I will withdraw it, Mr. Chairman, but I want to say this to the minister: How do you expect a professional body representing 7,000 pharmacists in this province to negotiate in good faith with your ministry when there are no negotiations at all with respect to the kind of legislation you are bringing forward? This amendment was introduced at the 11th hour yesterday. Even the members of this committee had not seen the amendment that was put before us. You expect the OPA to negotiate in good faith with your ministry when you cannot even sit down and negotiate with it on matters of this type? That has been the whole thing throughout these five months of hearings. The bills were introduced on November 7 with no prior negotiation whatsoever.

Hon. Mr. Elston: That is wrong.

Mr. Leluk: No, it is not wrong.

Hon. Mr. Elston: That is wrong. You are saying there were no negotiations. I am saying there have been continual meetings. There has been a series of meetings, and we have had input all over the place.

Mr. Leluk: No way.

Hon. Mr. Elston: To be quite honest, we will have to disagree with that.

Mr. Leluk: There were no negotiations with any of the interested groups, whether it be the Pharmaceutical Manufacturers Association of Canada, OPA or OCP.

Hon. Mr. Elston: Let us see now. We had at least 15 meetings through 1985. We had a couple of meetings in January. We sat down and talked about possibilities with respect to best available price and other things last Friday. We have had continual meetings.

Mr. Leluk: They have all been after the fact.

Hon. Mr. Elston: Not so.

Mr. Leluk: They have all been after the introduction of the legislation.

Mr. Chairman: Order.

Mr. Leluk: I have talked to the groups and I know that what I am saying is true. I do not want to say you are misleading this committee.

Mr. Chairman: No, I would not.

Hon. Mr. Elston: No, he would not.

Mr. Leluk: I would not.

Mr. Chairman: Order. I have allowed the three of you to express differences of opinion that have nothing to do with the point of order at this point.

Now that we have vented that and we are getting off to our usual 10:30 start, we should adjourn in about an hour so that we can all rest up for a long lunch. Can we proceed with some meaty discussion of section 5b?

Mr. Davis: I do not know whether this is a point of order, but it is a concern I have. I would like you to allow me to say a few words, and then you can make a ruling. If not, I will make a motion.

Mr. Chairman: A motion would be very helpful.

Mr. Davis: Then I will make a motion and speak to the motion, if I may do that, and you can tell me whether it is in order.

I move that this committee allow the OPA and the college to come before us as soon as possible to make us aware of their comments and concerns on the section 5b that we received yesterday afternoon.

Mr. Chairman: The motion is that the OPA and the Ontario College of Pharmacists come before the committee as soon as possible to comment on section 5b as introduced yesterday.

Mr. Davis: I assume they could do that this afternoon.

Mr. D. S. Cooke: On a point of order, Mr. Chairman: I may be totally incorrect, but is it possible to put another motion on the floor when we already have a motion on the floor? We have an amendment that was moved by Mr. Ward on the floor of this committee right now.

Mr. Chairman: That is a good point. Even though it is a procedural motion, it is not in order until we have dealt with the other motion; I think that is true. It would not be in order until we have dealt with the motion, unless there were a unanimous decision by the committee to accept it.

Mr. D. S. Cooke: We should get on with the bill. We could be debating it for five months. The Tories debated it for 10 years and did not do anything about it.

Mr. Leluk: Is it that urgent, Mr. Cooke?

Mr. D. S. Cooke: Yes, it is, if they want to get a formulary printed.

Mr. Chairman: I rule it out of order at this point. There is no consensus for proceeding on that. Is there further discussion on--

Mr. Davis: How about a motion to table?

Hon. Mr. Elston: There is no table in committee.

Mr. Davis: Is there not? Thank you for helping me. That is too bad because I would have moved that, too.

Mr. Chairman: Further discussion on section 5b.

Mr. Davis: Could I ask the minister a question, and correct me if I am wrong? You asked this committee not to deal with Bills 54 or 55 for approximately three weeks at which time you were going to gather up all your amendments and bring them before this committee. Could you inform this committee as to why, yesterday afternoon after lunch, you gave us this specific amendment? Why could we not have had it before in order that we could have dialogued with the various interest groups so we could have had at least some information as to where there were some concerns with this?

Hon. Mr. Elston: It is fair to say that this is in reply to some surprise amendments that you have put in about binding arbitration for all aspects of management of this program. It took us some time to deliberate on exactly what would be a mechanism that would move further from where our original bill position was to one which would be a much more open and more fully explainable.

We looked around various areas, in government and other places, which would take us away from binding arbitration which in this situation, I do not see as being beneficial to allowing us to manage our system. We took a lot of time to analyse and study what might be done and it took us a considerable amount of time discussing with several groups of people exactly what might best be arrived at.

It took a number of discussions with people, and because of this and as it is a movement from where our bill is, it took us some time to arrive at it. You may not find that acceptable but that is why it took us some time to do.

In addition to that, this was not the only section that we were working on. We spent considerable time trying to figure out exactly where we were moving with other particular matters. We introduced, for instance, a couple of things that we talked to the college about. We have moved to help make them a little more sure that they are going to be able to manage the program under Bill 55. This one is a result of a lot of deliberation. That is why it came--

Mr. Davis: I will bet that it is the response of a lot of deliberation. Are you asking me and this committee to understand that when this committee gathered on Monday, this section was not drafted? And you had--

Hon. Mr. Elston: It was not drafted in the form--

Mr. Davis: I have not finished, Mr. Chairman--

Hon. Mr. Elston: I am sorry.

Mr. Chairman: Order.

Mr. Davis: Thank you--that on Monday this was not drafted?

Hon. Mr. Elston: That is right.

Mr. Davis: Then, on Monday, were you prepared to have binding arbitration as the resolution?

Hon. Mr. Elston: No.

Mr. Davis: And it took you three days to draft this piece of the legislation--this section 5b?

Hon. Mr. Elston: No. We had the essence of this thing. It had appeared in many forms before in terms of the agreement which had been set up with the Ontario Medical Association. We had put down various aspects in point form, or bullet form if you like, as to now we think this thing would have worked out when we were talking with others about the dispute mechanism.

It had been there; we had not finalized it; we could not get any real consensus as to how we might develop it. It was only on Monday that we started the actual drafting of this legislation. It was done more particularly Tuesday and, as you saw, it arrived in its final form yesterday. That is exactly right and you have really understood well.

10:30 a.m.

Mr. Davis: I think I understood quite well but I would still like to get at it. If I understood what you just advised the committee, the particular process you have here is one that is very similar to that used in negotiations with the OMA and, therefore, the framework was already in place. At that point, you would be able to make the transposition over so that it would be applicable in this section.

I understood your deputy minister to say, and I could be wrong, that it was Friday that he had some discussions--I do not know whether it was last

Friday or a week Friday--with the Ontario Pharmacists' Association.

Hon. Mr. Elston: Last Friday.

Mr. Davis: You were there?

Hon. Mr. Elston: I was at the discussions with the college and I was there for part of those with the OPA.

Mr. Davis: At that time, you discussed the general perceptions of the mechanism that is already in place under the OMA.

Mr. Leluk: No.

Hon. Mr. Elston: I think the deputy said that it was not. We discussed, certainly while I was meeting with the college, dispute mechanisms in the sense of how they might deal with problems in doing enforcements under Bill 55 and whatever. But I did not say that. The one thing that I did quite clearly say though, was that, if I may continue to the first part of the question which I presume you are now finished with, there was a general framework under the OMA but the OMA framework is not in legislative form.

Mr. Davis: I realize that.

Hon. Mr. Elston: It is part of an agreement that was arrived at in 1982, if I am not mistaken. We then have to move from there, convert it, and see what might be appropriate with respect to our particular legislation.

Mr. Davis: A few minutes ago you stated that the reason we did not get this until yesterday was because you had to do some consulting. Who did you consult with?

Hon. Mr. Elston: Several independent people. I also spoke with members of an opposition party to see if there was a consensus.

Miss Stephenson: Oh, really? That is nice.

Mr. Davis: You have stated that one of the points that is very interesting to you with respect to this, that you feel that public would really like to have, is subsection 5b(12), halfway down page 2, "Recommendations made public."

Hon. Mr. Elston: It would be of help, I think.

Mr. Davis: "If more than seven days have passed from the date on which the chairman's recommendation was made to the committee, the minister or the Ontario Pharmacists' Association may make it public after first giving the other person 48 hours written notice of the intention to do so." If you believe it is imperative that this system has an openness for the public to have access, why did you not use the word "shall"?

Hon. Mr. Elston: If the discussions are ongoing, and it is permissive rather than "shall," I would believe, and you can see it right through here, that if an agreement is arrived at, then an agreement will take precedence even over these series of deliberations. If we give notice to the OPA that we are not satisfied and we will make things public, that is fine. If they give notice to us, they can make things public because they are not satisfied. That is why it would say "may". It does not require them to make

everything public. It means that we can stay on a negotiating mode if that is the case.

I think it is quite clear, from this whole mechanism, that the desire is to continue pressure on each of the parties to come to a conclusion in terms of an agreement. You will find that subsection 17 ends up saying that if there is an agreement, of course it will override whatever recommendations are made, for instance, by the independent chairman.

Mr. Davis: In subsection 9, you state, "...the minister or the association believes that the committee's negotiations have reached an impasse...." What criteria would you as the minister apply to decide that an impasse had been reached?

Hon. Mr. Elston: It would be if no more progress was being shown. However, I can say that it is either the minister or the association. The association might have some criteria as well.

Mr. Davis: I did not ask you that. I asked about your criteria.

Hon. Mr. Elston: I said, "if there was no progress."

Mr. Davis: What do you mean by progress?

Hon. Mr. Elston: If there were areas of dispute, obviously, and there was no way of having any further discussion, I suppose, then there might be a case of having--

Mr. Davis: Can I extend that just a bit? For example, say that in the negotiations your parameter for the increase was 3.5 per cent and the pharmacists were asking for five. If they refused to come off the position and you refused to come off the position after a series of two or three days, would you then say that would be an impasse?

Hon. Mr. Elston: I am not sure it is. It would have to be on the basis of all circumstances. It is really a hypothetical situation that cannot be analysed until you are in the middle of those types of discussions. That is an impossible question to answer under our current circumstances. It is not unusual to have people negotiating and starting out with positions that then have to be worked upon.

Mr. Davis: I am quite aware of that.

Hon. Mr. Elston: You were a trustee in a school, I believe,

Mr. Chairman: In a former life.

Mr. Davis: Perhaps you would clarify for me why you, as the minister, would not allow the binding arbitration process. If I am correct, and I always stand to be corrected, if I go through Hansard, I will find your statements and the statements of the then official opposition asking for that kind of recommendation in various debates of the House. I would like to know why you now have moved off that premise?

Hon. Mr. Elston: With respect to the management of this piece of legislation, it is quite appropriate to go with a dispute mechanism similar to that which is being used--and effectively at least from the testimony of the medical association--to another profession. We should try to parallel our

settlement mechanisms as best we can. This is a professional group. These are people we would like to see come to an agreement and I think the public pressure on us, as a government, is such that we would end up with something. They could put their case to the public and we could do the same. That keeps the pressure on both of us to come to a resolution.

Mr. Davis: Would you concur that teachers are a professional group?

Hon. Mr. Elston: I cannot comment on teachers. We are really talking about the pharmacists.

Mr. Davis: Would you concur they are a professional group?

Hon. Mr. Elston: With regard to what is being proposed here, it is not binding arbitration and I will clearly admit it. There is no question it is not binding arbitration but it is a very effective and workable dispute mechanism. This is one I would like to see incorporated into this legislation. That is quite clear.

Mr. Davis: Let me pursue it a bit further, Mr. Chairman.

Mr. Chairman: I guess so.

Mr. Davis: If I understand Bill 100 correctly, when there is an impasse within the structure for negotiations in Bill 100, one of the options that exists--it may not be used--is for the parties to ask for binding arbitration. Why would you not put that in as an option? You could say that in order to reach that one or both parties could agree to that. Why would you not put that in there?

Hon. Mr. Elston: I am not sure. Is that not if there is consent?

Mr. Davis: Yes. Why can you not put it in there? That is what I am asking.

Hon. Mr. Elston: It would not be beneficial to this mechanism. I find this mechanism to be pretty encompassing.

Mr. Davis: Why not? I am having difficulty understanding why you, as a government, would propose it and stand for it on one side, and then, when you have an opportunity on another side, somehow believe there is no justice in incorporating it into the section?

Mr. Chairman: I know it is wrong for me to try to help in a situation like this but if the ministry has very clearly decided not to go for an arbitrated approach, it is quite possible for you to move amendments to this which would add in an arbitrated approach.

Hon. Mr. Elston: If Mr. Davis is proposing that this be a dispute mechanism like Bill 100, I think that Bill 100 is not appropriate to this profession. The profession of pharmacy is a group of people, at least as I understand it--

Mr. Leluk: Of second-class citizens.

Hon. Mr. Elston: --who do not want to take away their services from the public. They are quite geared to providing services.

Mr. Davis: I understood the pharmacists want binding arbitration.

Mr. Reycraft: You are trying to turn pharmacists into civil servants.

Hon. Mr. Elston: No, but there is a situation in Bill 100 that puts a strike into the type of situation--

Interjections.

Mr. Chairman: Order. First let the minister finish.

Hon. Mr. Elston: If Mr. Davis wants to suggest an amendment to this section that there be binding arbitration if both parties request it, or by consent of both parties, put the amendment. That is Bill 100. If you want to do that, then put the amendment to this section.

Mr. Davis: You bet your bottom dollar I am going to do it.

Hon. Mr. Elston: Do it. It is your turn.

Mr. Jackson: You have a regulation saying you cannot.

Mr. Chairman: I await it with bated breath. Anything further, Mr. Davis?

Mr. Davis: Not for now.

10:40 a.m.

Mr. Chairman: I have nobody else on the list at the moment. Does anybody else wish to comment on portions of this--

Mr. Davis: On a point of clarification: Are we going to go to this section totally as it is?

Mr. Chairman: I opened it up so we could have the debate on it in any way you wish. We have not had the debate in its entirety but we can go through it clause by clause if you wish, which is the way we dealt with everything else.

Mr. Davis: If I could just have a moment to confer with my colleague--

Mr. Chairman: Absolutely.

Turn up the mikes, Hansard.

Mr. Davis: I have another point of clarification. When we make the various amendments we would like to make to that section, do we make those amendments now or as we go through it?

Mr. Chairman: Let us just do it as we come to each. If we are going to go through it as we have everything else, I will read out what currently exists, then hesitate and wait an appropriate length of time for you to give me an amendment if you have one. Then we will move to that amendment. All right?

We are dealing with section 5b, a motion by Mr. Ward. It reads as follows and I will stop at each subsection.

Mr. Ward moves that the bill be amended by adding the following section--

Mr. Jackson: Are we able to present any amendments, or do we have to go--

Mr. Chairman: I guess you were not listening. I said because I have been pressed to do clause by clause on this, I will read out what currently exists in the amendment we will be voting on. At that point, a subamendment is in order. It is a matter of preparing your motions to fit the subsection where you want your amendment to go. I will go through this slowly so there is no rushing past any point that you might want to put one in.

Mr. Davis: Can you just help me? If I want to make an amendment to incorporate an arbitration process, would I make it as we come to the subsection?

Mr. Chairman: I think it would make sense, depending on how you want to do it. I do not know what your intent is. If you like the process that is down here but want to add arbitration as a final mechanism, rather than the final thing, then you put it in at the end. If you wish to refer to it earlier, you should do so back when we are talking about renegotiating. It is up to you to decide where you would like it.

Miss Stephenson: Are you breaking this down paragraph by paragraph?

Mr. Chairman: Yes.

Miss Stephenson: Yesterday, you could not have heard me at all, Mr. Chairman. Today, I am not sure you want to but you are going to have to.

Mr. Chairman: I always want to, as you know.

We are at subsection 5b(1).

Mr. Ward moves that the bill be amended by adding the following section:

"5b(1) In this section, 'association' means the Ontario Pharmacists' Association."

Mr. Chairman: Any further discussion on subsection 5b(1)? All those in favour, please indicate.

Motion agreed to.

Mr. Bernstein: You are deleting Society of Independent Pharmacists there.

Mr. Chairman: Legal counsel has said to me that, with permission, we will edit the section as we go through it to be sure that the word "association" is consistent throughout, since we have this definition. The wording at the moment is not quite like that. Is there general agreement?

Mr. Ward moves that the bill be amended by adding the following section:

"5b(2) The minister and the association may by agreement, with or without referring the matter to a fee negotiating committee, determine the fee the minister shall pay to operators of pharmacies under subsection 5a(2)."

Mr. Leluk: Can we move an amendment to that subsection?

Mr. Chairman: Mr. Leluk moves that the word "may" be deleted and replaced with the word "shall."

Would you like to speak to that?

Mr. Leluk: I believe it should be mandated; the minister and the professional association representing the pharmacists "shall by agreement," not "may by agreement." "May" is not mandatory. For that reason, I believe we should change that word to "shall."

Mr. D. S. Cooke: If we do that, the whole remaining part of the section becomes inoperative. If they do not come to an agreement, we then move to the section where the minister sets the fee if there are no negotiations.

Mr. Jackson: That is an assumption that this will--unless the NDP has already made its deal--

Mr. D. S. Cooke: May I finish, Mr. Jackson.

Mr. Chairman: Who is speaking here? Mr. Cooke is indicating that he wishes to continue to speak.

Mr. D. S. Cooke: The reason it says "may" is that if the OPA and the ministry want to sit down and come to an agreement without going through the rest of the process, that can be done. If either party does not want to do it that way, then it goes through the other formal procedure which offers all of protections.

I think Mr. Leluk may be, shall be or is confused.

Mr. Leluk: Hardly. After yesterday's performance, you are the one who is confused.

Mr. Chairman: Anything is possible, as I have said many times.

Mr. Jackson: We wish it to stand because we will be introducing the NDP motion on arbitration. We think it would be somewhat consistent if it read "shall" instead of "may" because there will be the opportunity, by agreement, to go to arbitration, and therefore the fee will be set by the two original parties through a third party.

Mr. Chairman: Life gets stranger and stranger. Any further discussion on the subamendment?

Mr. Laughren: I want to know whether the members of the official opposition want to reconsider that, given the fact that it would preclude compulsory arbitration. Do they wish to proceed with the amendment or do they wish to withdraw it?

Mr. Leluk: It depends on what happens here.

Mr. Laughren: No. I mean this amendment. Do you still wish to pursue it?

Hon. Mr. Elston: This amendment undoes all the other dispute mechanisms.

Mr. D. S. Cooke: Maybe we should support it.

Mr. Laughren: Maybe we should.

Mr. D. S. Cooke: Maybe we should buy it.

Mr. Laughren: What would happen then? Are you sure you want to proceed with it?

Mr. Jackson: You have made a statement. Let us vote.

Mr. Chairman: They have indicated that they do wish to proceed, Mr. Laughren.

Is there any further discussion on the amendment moved by Mr. Leluk, that the word "may" in subsection 5b(2) shall be replaced by the word "shall" in the first line.

Hon. Mr. Elston: We are not ready to have the question put yet. We are conferring.

10:50 a.m.

Mr. Chairman: I see. I realize people have difficulty with the English language, but I hope that if they read this carefully they will understand exactly what is being said.

Are we all reassembled?

Mr. Ward: Just to clarify it, the intent of the motion is to mandate that the fee can only be changed through the agreement of both parties. Obviously, if the parties do not come to an agreement, the fee cannot be changed.

Mr. Chairman: That would be my interpretation of the words "shall by agreement."

Mr. Ward: It is making an agreement mandatory; it "shall."

Mr. Leluk: Maybe I can clarify what I was saying. It was that there shall be an agreement reached by some process, which could include arbitration.

Hon. Mr. Elston: No--

Mr. Leluk: Yes.

Hon. Mr. Elston: --that is not agreement. Arbitration is not agreement.

Mr. Leluk: There are a number of ways agreement is reached. You know that.

Mr. Chairman: It would appear there are various interpretations of this already without even bringing the lawyers into it.

Mr. Laughren: Would this mean then that if we support Mr. Leluk's motion, which I am certainly inclined to do at this point, the status quo would be retained?

Mr. Leluk: That is not the intent.

Hon. Mr. Elston: The obvious implication to this amendment is that we have a regulation in place now which does set the fee. It says the fee shall not be changed but by agreement. That would say that the fee which is currently there must only, and shall only, be changed by agreement, because it says, "The minister and association shall by agreement"--if the amendment passes--"with or without going to the negotiating committee, determine the fee the minister shall pay." If there is no agreement, obviously the mechanism in place is not available for dispute resolution. It says by agreement only and I am afraid, Mr. Speaker--Mr. Chairman rather--

Mr. Davis: Mr. Speaker? Is that what is going to happen? Richard, did you get that? I know you have been practising.

Interjections.

Mr. Reycraft: It is the way you have been announcing--

Hon. Mr. Elston: I apologize, Mr. Chairman, for this in-the-field elevation.

What that amendment indicates to me and the members of the staff here is that we have no other means than by agreement. Everything else is superfluous with regard to how we go about changing the mechanism. Although Mr. Leluk is obviously trying to cause problems by putting in these amendments, in fairness I would prefer--I speak for the Liberal Party only--that we go through and have a very public mechanism for any possible dispute resolution. That would prevent us from getting into a situation where failure to agree would result in long delays in changing the fee.

Mr. Leluk: I agree with the minister--

Mr. Chairman: Order, just for a second. I know you did not mean to impugn a motive to Mr. Leluk, but you did.

Hon. Mr. Elston: Did I? I am sorry.

Mr. Chairman: You said he was trying to confuse things. I do not think you meant that.

Mr. Leluk: The amended statement--

Hon. Mr. Elston: May I acknowledge that the amendment confuses the minister.

Mr. Leluk: Wait. I am going to clarify my amendment by amending that amendment to read, "shall by negotiation, with or without referring the matter to--

Interjections.

Mr. Chairman: It is his own amendment.

Mr. Leluk: I am clarifying the amendment.

Mr. Laughren: An unfriendly one.

Mr. Chairman: It is hard to be an unfriendly one when it is the same person moving it. "Shall by negotiation" will now replace the words "made by agreement."

Mr. Leluk: That is right. "Shall by negotiation."

Mr. Chairman: All right. Is there a debate on the new revised amendment to the amendment?

Interjection: New and improved.

Mr. Chairman: I would not make a value judgement. That is up to you.

Mr. D. S. Cooke: If that is the case, it is false advertising.

Mr. Chairman: There is no discussion. There is understanding of it.

Mr. Leluk moves that the minister and the association shall by negotiation, with or without referring the matter to a fee negotiating committee, determine the fee the minister shall pay to operators of pharmacies under subsection 5a(2).

Motion negatived.

Mr. Davis: I would just like you to know that if the minister is going to make you the Speaker of the House, we will support that.

Mr. Chairman: Thank you, Mr. Davis. You normally have to take everything back to your caucus. I cannot believe it.

Mr. Davis: I guarantee that we would have no problem doing that.

Mr. Chairman: My conditions are too extreme. I will not wear that silly hat.

Going back to Mr. Ward's motion on subsection 5b(2), is there any further amendment? Then let us take the vote on the unamended motion with the words "may by agreement."

Motion agreed to.

Mr. Chairman: We now move to subsection 5b(3).

Mr. Ward moves that the bill be amended by adding the following subsection:

"(3) An agreement made under subsection 2 may establish classes of operators of pharmacies and provide for an amount payable in respect of each class."

Miss Stephenson: May I ask the intent of that section?

Mr. Chairman: We dealt with this a fair amount yesterday.

Miss Stephenson: I am sorry; I was not here yesterday.

Mr. Chairman: That is all right. The intent essentially was to deal with some of the exceptions that are out there.

Miss Stephenson: What exceptions?

Hon. Mr. Elston: There were two pilot projects dealing with nursing homes, for instance, on which a special remuneration mechanism called capitation was involved. It is based on so much per patient bed occupied per month. That mechanism was involved there. As I also said yesterday, it could provide on an agreement that there be a different level of dispensing fee for what are commonly called community pharmacies, those small-volume pharmacies. It could allow that, for instance.

Miss Stephenson: What are you considering the components of a dispensing fee? You are suggesting to me that you are not considering the dispensing fee to be primarily a professional fee, which should be the same whether the professional individual is in a small community pharmacy or in a very large pharmacy. There are other mechanisms, and not the professional fee, that should come into effect to account for those differences. The professional fee is the same no matter where it is carried out.

Hon. Mr. Elston: There are any number of different things that might be included in that to recognize, for instance, geographical isolation, which has a difference built into it for those people. The agreement does not specifically preclude that type of an agreement between the association and the ministry. I am not myself in a position to do those. Those are the types of things we would have to discuss with the association.

It just says that we could provide for different established classes of operators of pharmacies and whatever other things, but that would have to be part of the agreement. I cannot contemplate now specifically what those might be. I have no particular inclination towards any of those things now because, quite frankly, we have not talked about it with the Ontario Pharmacists' Association.

Mr. Chairman: We were also told yesterday that this type of provision exists in the present agreement.

Hon. Mr. Elston: The participation agreement.

Mr. Chairman: It is in the participation agreement that is there now, to allow some flexibility if there is agreement.

Miss Stephenson: The difference is that we are legislating the agreement. If we are going to be legislating it, we should be damned sure we know exactly what it does and what its intention is for the future. It seems to me that this potential is to allow the minister to determine that there will be classes of professional quality in various parts of the province that could then be paid at different levels. I do not believe that is what the minister intends at this point, although he may. If he does, then we should know that that is his intent. We should have been aware that there was going to be this type of potential modification.

11 a.m.

After all the discussion we had about the way in which pharmacists should be paid, I thought we had come to some conclusion that the dispensing fee was something that was primarily made up of the professional component and that there were other ways to deal with the varieties of situations in which pharmacists find themselves.

Hon. Mr. Elston: To clarify, this says it has to be under the auspices of the agreement made under subsection 2. I cannot unilaterally do it under subsection 5b(3). Obviously, Dr. Stephenson, this is something that is permissive with respect to the things that can be deliberated upon by the Ontario Pharmacists' Association and the ministry; it does not legislate an agreement.

Miss Stephenson: If it were not there, it would be equally permissive, but such could be developed under an agreement.

Hon. Mr. Elston: I think this makes it quite clear that we are following some of the provisions of that participation agreement. We would like to include this because it recognizes a term of that participation agreement.

Mr. Jackson: Can we have a recorded vote on this section?

Mr. Chairman: Certainly.

Miss Stephenson: I think it is wrong, at any rate, that it is worded in this way. Do you think, Mr. Chairman, that it is necessary in this piece of legislation? I think it is a part of the agreement which could be established as a result of negotiation. Could we establish that it be the result of negotiation and does not need to be written into the act to provide the minister with an opportunity to do something which I do not really believe this bill encompasses or foresees.

Mr. Jackson: It is unfortunate that Dr. Stephenson was not the beneficiary of the three or four occasions yesterday when both the New Democratic Party and the ministry advised us of similar situations in which they felt that clauses of this type were superfluous and just added extra wording to the bill, as you have reminded us with your quip on consistency, Mr. Chairman.

Mr. Chairman: It has never been anything that has held us back in the past.

Mr. Davis: Can the minister enact that type of process without the reliance on regulations being incorporated into this bill?

Hon. Mr. Elston: Not under this subsection, but I think it is quite clear that there is regulation-making power in the ministry and in the minister, which is as it is today. I can recommend regulations even now.

Mr. Davis: So why incorporate that in this part? If you already have that power, why specifically incorporate it into this bill?

Hon. Mr. Elston: This refers to subsection 2, which says they may consider different classes of operators, for instance. It does indicate quite clearly that under the auspices, first, of the participation agreement and, second, of this legislation, we are able to have some flexibility.

Mr. Davis: I stand to be corrected, but can he not do that now under section 11?

Mr. Bernstein: We provided further on, under subsection 3 of the regulation-making section of this bill, for the power of the minister to "establish classes of operators of pharmacies...and provide for differing

amounts payable" for each class. This proposed subsection 5b(3), with respect to the agreement that may be entered into, is parallel to that power to make regulations. The whole idea is to ensure that both parties, if it is by agreement, or that the minister, if it is by regulation, have authority to provide a different dispensing fee for different classes of operators. It is to provide that flexibility. It is not at all clear that the minister or the parties will have the power to make that kind of range of fees in the absence of a provision such as subsection 3.

Mr. Davis: Can I clarify something with Mr. Bernstein? Mr. Bernstein, when you talk about the fees, are you referring to subsection 5a(18), which refers you back to subsection 5a(2)?

Hon. Mr. Elston: No. He was talking about section 11, which is the regulation-making section.

Mr. Davis: That is right, except that clause 5b(18)(c) says "in all other cases, the amount provided for by the regulations." I am not a lawyer, but it seems to me that says that power already exists in your hands. You do not need subsection 5b(2) to do it, because clause 5b(18)(c) allows you that flexibility.

Hon. Mr. Elston: I prefer to have those clauses allowing the agreement to provide for those "classes of operators." If you think it superfluous, you should vote accordingly.

Mr. Chairman: If it would help to clarify things, the legal counsel would like to make a comment.

Ms. Baldwin: Committee members should compare the proposed subsection 5b(2) now before the committee with subsection 11(3) of the bill. When the minister, through the government, makes regulations, he has to do so within the regulation-making authority, which is under section 11. When you are concerned about regulation-making, you look to the powers that are given there. I think you will find that subsection 11(3) does much the same thing, with regard to regulation-making, that subsection (2) of 5b does with regard to agreements. That is to clarify Mr. Bernstein's statement, which I think is quite right, that the subsection we are dealing with now deals only with agreements between the minister and the Ontario Pharmacists' Association.

Mr. D. S. Cooke: In regard to the comment Mr. Davis made about clause 5b(18)(c), I do not think you can talk about clause 18(c) without reading all of subsection 5b(18). Clause 5b(18)(c) does not have anything to do with subsection 5b(3). "In all other cases" applies if there is no agreement. It seems to me subsection 5b(3) offers some protection for the pharmacist. If we do not have this section, something can be done unilaterally without going through the negotiating process.

Mr. Davis: That is the reality.

Miss Stephenson: My concern remains that the language being used permits something more than I think is being contemplated at this time.

Mr. Leluk: A hidden agenda.

Miss Stephenson: I very imploringly asked that there be some modification of the language to ensure we are talking about structural or organizational arrangements regarding payment, not about the negotiation of a

different level of fee for pharmacists simply because they happen to be in northern Ontario rather than in southern Ontario.

Mr. Chairman: The possibility of amendment is here. This is your time for that. The ministry, at the moment, seems to like its language. Therefore, if it is going to be changed, the changes will have to come from committee members.

Miss Stephenson: The language as currently written is a wide-open gate which permits anything to happen, except by negotiation. Negotiation is not necessarily going to resolve all of this, I am afraid.

Mr. Jackson: Yesterday Mr. Bernstein said that operational matters should be contained in the definitions. Can we get a definition of "classes of operators"? It would help me to understand it. I share Dr. Stephenson's concern about the breadth of authority and I lack an understanding of what different classes of professionals there are. I did not think that was a notion that was going to be entrenched in this bill. If it is, it should be defined in some way for future governments.

Mr. Chairman: Mr. Bernstein will respond when he gets closer to a mike.

Mr. Bernstein: The word "classes" has been used in legislation as long as I have been around. It has no special meaning other than "category" or something of that kind. It indicates a subgroup or a part of a whole, as distinct from the whole. I suppose, in a way, it does not sound good in a classless society.

Mr. Laughren: Who said it was a classless society?

Mr. Chairman: Yes, exactly. I think you are perpetuating that myth.

Mr. Bernstein: It is meant to distinguish between different categories of operators of pharmacies. The issue is whether you want to make that distinction or whether you do not want to make that distinction.

11:10 a.m.

Hon. Mr. Elston: Obviously in this situation "classes" would be defined in the agreement because this does refer to the agreement under subsection 5b(2). Anything that would be determined would be defined clearly and fully in that agreement. The ministry and the OPA have had a long history of drafting of agreements that are full of clarity. We generally look to those very minute details, which I am sure would certainly satisfy Mr. Jackson. I am sure any agreement would fully satisfy the OPA and the ministry.

Mr. Chairman: I am not getting anything new on this. I understand, at this stage--

Miss Stephenson: The word "shall" needs to be used.

Mr. Jackson: I have a recommendation for consideration. Can you stand down this section pending some effort on the part of the ministry to draft a definition? We have established that it is not essential that this clause be in the bill. You still have the ability to perform in a capacity that you seem interested in having, but you insist on having it in. I am merely requesting that we clarify it by definition. Perhaps we could just

simply stand it down until it is defined. Mr. Bernstein has recommended to this committee that matters of this nature and some like it be included in definition. He made specific reference to that yesterday.

Hon. Mr. Elston: I am unwilling to define a term of the agreement in legislation.

Mr. Jackson: No. I did not ask that.

Hon. Mr. Elston: That is what this refers to. This says that an agreement could provide for in the agreement. Quite specifically, the agreement made under subsection 2 would have to set out the definitions.

Miss Stephenson: That is what you are doing. You are defining the content of the agreement in this legislation.

Mr. Chairman: There is a motion on the floor. It can be a request to stand down--

Mr. Jackson: It was stated as a request. There is no--

Mr. Chairman: There is no agreement.

Mr. Jackson: Something stinks.

Mr. Chairman: My sense is that we have had a very full discussion of this and there is an understanding from the two perspectives, at least that I have heard, of the difference of opinion here. Having no subamendment before me, I will-- I have had a request for a recorded vote.

Miss Stephenson: The minister said this would be a part of any negotiated agreement.

Mr. Chairman: Of "an agreement." Not of any one, but of an agreement.

Miss Stephenson: It would be part of a negotiated agreement, which is part of subsection 5b(2). If it is indeed a part of that agreement, why--

Hon. Mr. Elston: No. It says "it may." Read the section, Bette. It says "may be part of that agreement." If there is no agreement, then it will not be there.

Miss Stephenson: Come on. If it says it may be a part of the agreement, then it does not have to be a part of the agreement and you may, under regulation, do it without it being a part of the agreement.

Mr. Chairman: These are two different interpretations of the language which are no different than what I have been hearing up to this point.

There was a request for a recorded vote earlier on when I thought we were coming to a vote. Is that still the desire?

All those in favour of subsection 5b(3), please indicate.

The committee divided on Mr. Ward's motion to add subsection 5b(3), which was agreed to on the following vote:

Ayes

Cooke, D. S., Laughren, Miller, G. I., Offer, Reycraft, Ward.

Nays

Davis, Jackson, Leluk, Stephenson, B. M.

Ayes 6; nays 4.

Mr. Chairman: Mr. Offer moves that the bill be amended by adding the following subsection:

"(4) There may be established from time to time as provided for under subsection 6 a fee negotiating committee to be composed of,

"(a) three voting members appointed by the minister;

"(b) three voting members appointed by the association; and

"(c) a chairman, who shall not have a vote, to be appointed jointly by the minister and the association."

Mr. Davis moves deletion of clauses 5b(4)(a), (b) and (c), and subsection 5b(5).

Mr. Davis: I stand corrected, but I assume it would go all the way through.

Interjection:

Mr. Davis: I can certainly move a deletion.

Mr. Ward: That is not an amendment. That is contrary to the motion.

Mr. Davis: No. It is not contrary to the motion. I am making an amendment and I can delete.

Mr. Chairman: If I might explain this, if you wish to amend part of a section you may do so, but part of that section has to stay for it to be amended. What I thought I just heard you say was that you were going to delete clauses 5b(4)(a), (b) and (c). That is a vote against. I need to know what you are replacing what with, etc., if there is going to be an amendment.

Mr. Davis: I am going to amend section 4 to read:

"If agreement cannot be reached as to the amount--" By the way, I should--

Mr. Chairman: Replacing which words? I am sorry. Where is this starting?

Mr. Davis: (4) "There may be established from time to time--"

Mr. Chairman: A fee negotiating committee. Do you want to ignore subsection 6?

Mr. Davis: Yes. "If agreement--"

Mr. Chairman: Why do we not have a bit of discussion on the section and then you work out how you would like to do it? Would you like to do it that way?

Mr. Davis: What I wish to do, and I seek your direction, is to place within this section the proposition that Mr. Cooke brought before this committee and then took away from the New Democratic Party, dealing with arbitration under the Arbitrations Act. It was on page 2 that he gave us yesterday morning to which I would like to make the addition. It says, "If agreement cannot be reached--

Mr. Chairman: I no longer have it.

Mr. Davis: It goes through. There are six sections to it.

Hon. Mr. Elston: You do not want a negotiating committee; you want to eliminate negotiations. That is very difficult for me to comply with. I would like to see negotiating.

Mr. Chairman: Unfortunately, I was told that it was withdrawn and I did not maintain my copy of it as a result. I am trying to find out whether you wish to replace subsection 5b(4) in its entirety with another subsection, which is this.

Hon. Mr. Elston: In fairness to Mr. Davis, he was saying his subsection would replace the remainder of this section.

Mr. Chairman: We are at only subsection 4, so the motion is to replace subsection 4 as written with subsection 4 on Mr. Cooke's motion yesterday.

Mr. Davis: That is correct.

Mr. Chairman: Mr. Davis moves that subsection 5b(4) be deleted and the following substituted therefor:

"(4) If agreement cannot be reached as to the amount of money to be paid by the minister under subsection 1 and where there is a previous agreement or award determined under this section, and its term has expired, either the minister or the Ontario Pharmacists' Association may serve upon the other notice that the minister or the association, as the case may be, desires that the amount be determined by mediation or, in the event that mediation fails, by arbitration under the Arbitrations Act."

would you like to speak to your motion?

Mr. Davis: Yes. I would like to speak to it. One of the rationales for incorporating that is that the method to determine the fee under subsection 5b(1) is normally reached by negotiating between the minister and the OPA. Where an agreement cannot be reached and there is a previous agreement, either party may serve notice of the desire for mediation or, in the event the mediation fails, for arbitration under the Arbitrations Act. The parties may agree upon a mediator or one may be appointed by the Ontario Labour Relations Board. If mediation fails, compulsory arbitration then follows and the Arbitrations Act applies.

It is my opinion and that of my colleagues that this is a more appropriate process; that there has to be some mechanism at the end that says,

"You have reached the end and now someone is going to take it and deal with it." That is why I think it is much more appropriate than the position the minister has offered.

11:20 a.m.

Mr. D. S. Cooke: With all due respect to Mr. Davis, if he had read the proposal that we talked about before, he would have seen that as important to the whole amendment was the whole process of mediation and making reports public, all those pressures that will eventually lead to bargaining in good faith on both sides and the avoidance of having to use arbitration.

The reason we have moved in the direction of accepting the government amendment is that it has accepted all those principles of making all the information public. I have more faith than the Conservatives have that when these bills are passed, there will be bargaining in good faith by both parties and that a negotiated settlement can be achieved. For Mr. Davis to suggest that the basic principle in our suggestion of a couple of weeks ago was only arbitration is for Mr. Davis to misinterpret what we were suggesting. Therefore, we will not be supporting this amendment.

Mr. Davis: The articles that I read were tabled yesterday morning by Mr. Cooke, not two weeks ago.

Mr. D. S. Cooke: Mr. Davis, you are completely incorrect. There was an amendment tabled several weeks ago.

Miss Stephenson: It was my understanding that Mr. Davis proposed to substitute that subsection for subsection 5b(4). There are five other subsections to follow that bear all the fruit Mr. Cooke has suggested regarding the public information. You do not put it in subsection 5b(4); you put it in subsection 5b(5), and you cannot do it all at once.

Mr. D. S. Cooke: It is obvious that you guys have been carried by the bureaucracy for 42 years because you sure do not know what you are doing here.

Miss Stephenson: The ruling by the chairman was that if we were going to remove a section, we had to substitute a section. That was the beginning of the substitution.

Mr. Chairman: What I ruled was that you cannot move deletion; you just vote against something. If you wish to amend, you have to place an alternative. That is all. You could have voted against it and placed it at some other time if you chose to. I did not want to make it sound as if that was the only time you could do it.

Miss Stephenson: We would have that opportunity in spite of the fact that with the new collusion, we have no chance of having any exception to this.

Interjection.

Miss Stephenson: Do not act so shocked.

Mr. Chairman: I act only from the chair here.

Mr. Jackson: I would like to speak to the amendment. I am flabbergasted at the reference to this 11th-hour conversion on the part of the

new Democratic Party. The reason I suggest that is the notion of public forum. You will know that in binding arbitration, mediation and the processes that lead up to binding arbitration, there is a process for public discussion. The arbitration will provide a means of not embroiling the public in a dispute or any form of conflict.

If the NDP is so anxious to have selective trust with this government, whether it is through the accord or through individual bills, I hasten to point out that we are embroiled in a confrontation with the Ontario Medical Association of the making of the Minister of Health (Mr. Elston), who is present here today, and he is promoting a model that is not currently working in Ontario.

Hon. Mr. Elston: That is absolutely wrong.

Mr. Jackson: You will have your chance to speak, Minister.

Hon. Mr. Elston: That is absolutely wrong. You heard Dr. (inaudible) saying to the committee it is working.

Mr. Chairman: We are discussing subsection 4.

Mr. Jackson: Citizens of this province will suffer if there is not an appropriate dispute resolution mechanism to protect the public. The government's proposal, which is propped up by the NDP's support, will lead to confrontation and that will surface in the future. You can put it in the bank.

Mr. Chairman: Mr. Leluk, did I notice your hand?

Mr. Leluk: No. Mr. Jackson has voiced my feelings on this business.

Mr. Chairman: I do not have any other people on my list at the moment. Does anybody wish to comment further on the motion by Mr. Davis?

Mr. Jackson: Are we going to vote on this subsection?

Mr. Chairman: Certainly. Seeing none, there will be a recorded vote. Do you understand the wording of it? Do you all understand that this would replace the existing subsection 4 with a new subsection 4, which has already been read out? I will not bother doing that again.

Mr. Jackson: For purposes of form, it should be subsection 5b(2) not subsection 5b(1), because that is the reference to the agreement. Subsection 1 was a definition. It should be subsection 2. That was agreed to by the motion.

The committee divided on Mr. Davis's amendment to replace subsection 5b(4) which was negatived on the following vote:

Ayes

Davis, Jackson, Leluk, Stephenson, B. M.

Nays

Cooke, D. S., Laughren, Miller, G. I., Offer, Reycraft, Ward.

Ayes 4; nays 6.

Mr. Chairman: We are back debating subsection 5b(4) as circulated yesterday.

Mr. Davis: First, I want to point out that the minister is using sexist language by using the word "chairman."

Mr. Chairman: Suggest an amendment if you like.

Hon. Mr. Elston: Chairperson; I am quite agreeable.

Miss Stephenson: That is not sexist language, and I will kill you, Davis, if you--

Interjections.

Hon. Mr. Elston: May I intervene in this family dispute?

Mr. Chairman: I do not think it is wise.

Hon. Mr. Elston: All right. I will not.

Mr. Davis: Can the minister clarify for me why he will not allow the chairman--person, man, woman--to have a vote? If we follow his proposal that three members appointed by the ministry and three people appointed by the association make a deliberation, and they wind up with some resolution that may put them at odds, the chairman who has been there listening to it all will certainly have the knowledge and wisdom of Solomon that is required to bring about a resolution by siding with one section or the other, rather than protracting lengthy debates and more opportunities to come together.

This way provides what I think the ministry wants to provide, that is, a new mechanism for negotiating in which there is a sense of fairness, an opportunity for both parties to place their concerns and an opportunity for the chairperson to be able to agree to one side or the other in case of a tie. Therefore, that then becomes the agreement.

Hon. Mr. Elston: This provides the chairman in this committee with far more flexibility than doing a final offer-selection process which is really what you are talking about. This provides a mechanism whereby the parties are able to have a public and open process. In that case, flexibility to the chairman, who is a nonvoting chairman, makes it much better for us.

Mr. Davis: Can you clarify for me how it is more public?

Hon. Mr. Elston: With regard to what happens here, it comes down to the three voting members from the OPA and from the ministry to come up with a decision. As we go on further in the section, you will note that the resolution of any disagreement must be done by a majority of the members of this committee, at least four out of the six.

In that case, it is not three from one and one from another; it is a majority of the members of each of the elected groups. In other words, it is two out of three of the ministry and two out of three of the association. That keeps the pressure on the designated delegates of each of those two parties to come to that dispute resolution. It puts the pressure on them to come to an agreement. That is why the chairperson ends up with more than just having a simple majority situation.

Mr. Davis: How does that make it more public?

Hon. Mr. Elston: It can be made more public in that the chairman is an independent person and can act as a person who recommends what should occur in the final result after all this public consultation.

11:30 a.m.

Miss Stephenson: Surely it does not limit the capability of the chairman as an independent member of the committee to provide the information after discussion if an impasse is reached, simply stating that the positions have remained. If that chairman is worth his or her salt, he or she may act as the arbitrator in that circumstance and become the majority member providing a recommendation to the minister.

I am also aware that ministers do not always take all the advice that is given and that there may be some difference of opinion--

Hon. Mr. Elston: Name one.

Miss Stephenson: There is one sitting here right now. None the less, it seems to me there is less than valid reason for excluding the chairman from the role of eventually being a voting member of the committee after the information has been made public.

I had one other request, that this committee not take it upon itself to rewrite the English language in this legislation. The word "chairman" is a valid word and should not be bastardized by making somebody from Personitoba, providing new variations of language. I hope there is solid agreement in this committee that we shall continue to use the English language as she is writ, which is fine for most people.

Mr. Chairman: I find it hard to control the members in their urge to desex. At any rate, are there other matters on subsection 5b(4)? If not, then we will take the vote on this.

These are clauses 5b(4)(a), (b) and (c) unless you ask me to divide it.

Miss Stephenson: I thought you provided an amendment for clause 5b(4)(c).

Mr. Chairman: No amendment was entered on it.

Mr. Davis: I apologize. I do want to make an amendment. I would like to remove the word "not" in clause 5b(4)(c), so a chairman shall have a vote. I guess you will have to tidy it up.

Mr. Chairman: Shall have a vote. That is fine.

Mr. Davis: Who shall vote in case of a tie.

Mr. Leluk: Otherwise, there would be a constant tie.

Mr. Chairman: Perhaps the easiest way to proceed through this, since that is just an amendment to clause 5b(4)(c), would be to take the vote on each of the others first and then I will go to that.

We will be voting on this:

"(4) There may be established from time to time as provided under subsection 6 a fee negotiating committee to be composed of,

"(a) three voting members appointed by the minister;

"(b) three voting members appointed by the association; and"

All those in favour, please indicate. All those opposed, please indicate. Carried.

I have a proposed amendment for clause 5b(4)(c). Mr. Davis moves:

"(c) A chairman to be appointed jointly by the minister and the association shall vote in the case of a tie."

Mr. Davis: This is different than "shall have a vote." I want to comment on that.

Miss Stephenson: I suggest you do not need to have that phrase in at all. If you simply omit the words "shall not have a vote," it means the chairman occupies the same role that a chairman usually does in a committee and, therefore, has a vote.

Mr. Chairman: If we take out "who shall not have a vote" as suggested by Dr. Stephenson, it would give the chairperson full committee member status and, therefore, the right to vote. It does not clear up when he shall have the right to vote, but he shall have the right to vote as a voting member at that time.

Mr. Jackson: I think it would be better to remove the word "not" since clauses 5b(4)(a) and (b) refer to voting rights and clause (c) is silent.

Mr. Chairman: I have a suggestion from legal counsel for you if you would like to consider it. The wording would be as follows: "A chairman who shall vote in the event of a tie is to be appointed jointly by the minister and the association." That is moved by Mr. Davis.

Mr. Davis: That is very consistent with a number of other committees that exist where a chairman remains neutral in the debates, but he is required to vote when there is a tie. That is the case in municipal council and in boards of education. That makes it consistent.

This committee itself follows the same rule. You are not able to consult with us. When we have an impasse, you cannot walk out, come back and say, "I suggest we do it this way," nor can you move off from the deliberations we have. You are required to make a decisive vote. It is only fair and just that the same process applies here and that the chairman shall vote in the case of a tie.

Mr. Chairman: I think the argument is understood. I am referring to the other side in previous discussion. Is there further debate on this?

Mr. D. S. Cooke: I want to make sure I fully understand the implications of this amendment. Could the ministry explain to us what the implications will be for the rest of the proposed negotiating process if this amendment is carried?

Mr. Bernstein: It would change the whole concept of the function of the chairman. The concept here is that if the parties do not reach an agreement between themselves, then the chairman separates himself from the committee and from whatever information may have come forward at the committee deliberations. He may rely on information derived from whatever source. In effect, he operates independently. If the chairman is to have a vote and to function as a voting member of the committee, he or she is limited to whatever information has come forward in the negotiation process within the committee.

That seems to me to be the fundamental difference in the role of the chairman and the concept of the chairman's function.

Mr. D. S. Cooke: In a sense, the chairman has two responsibilities under the government's proposal. He is to be the mediator and independent party as well as being the fact-finder who eventually makes a report public if there is an impasse.

If this person became a full-fledged member of the committee with voting rights, I am concerned that his or her ability to do a fact-finder's report and act as an independent mediator will be impaired. When we get to section 14, I would not mind hearing a further explanation from the government on why we could not have a simple majority of the voting members rather than having two from each party.

The other part of the proposal to have an independent chairman is a better proposal in terms of playing the other roles of mediator and fact-finder.

Mr. Chairman: Mr. Cooke, the discussion I have heard before in dealing with this issue of roles is that some think they should be combined and others think they cannot be.

11:40 a.m.

Mr. Davis: In response to Mr. Bernstein, what happens with the chairman is that once the deliberations are open and there is a tie and the chairman breaks the tie--it does not matter which side he seems to support, whichever resolution--that is then a recommendation from the committee to the minister. At that point, the minister, whoever he happens to be at that time, will have to decide whether that recommendation is the one he wishes to follow. That is where the responsibility should be. It should be with the minister at that point. The deliberation has gone on.

When you follow through the rest of this, you make some assumptions. You make an assumption that you are going to find another resolution, but I am not so sure you will find another resolution. A point in fact is Bill 94. After nearing all the deliberations, the chairman should say, "This resolution is the most appropriate at this time." The minister is then given a recommendation and can act or not act upon it.

I find it interesting that my colleague in the New Democratic Party suggests that the chairman performs the role of the fact-finder, which he does, but there is no mediation process as it is laid out, there is no mediator called in from outside, nor is there any termination of that. In most cases where there is a fact-finder mediation, there are some options. One of them is binding arbitration, or an arbitration process.

The chairman's role in this case--as you have been doing very well, Mr.

Jonnston--is to allow the parties to do the deliberations and debates and to arrive at their resolution. Then after the deliberations, the chairman makes a determination and takes it to the minister. At that point, the minister will make a determination. Otherwise, the minister often avoids the responsibility to make policies.

Mr. Chairman: I think we understand the perspectives that have been put forward here at this stage. Unless people wish to clarify it, the debate should not go on.

Mr. Bernstein: May I add something? The concept of a tie on the committee seems to be impossible, as I understand it from what we have here. A decision or an agreement within the committee requires that two of the three appointees of each party agree. If you have that, then a vote by the chairman is unnecessary. If you do not have that, it means you have one party where a minority or none of the members agrees with the position of the other party. In that circumstance, you would be asking for a vote of the chairman to change that decision. It is not a tie situation. It is a disagreement, a failure to agree at all. You are asking the chairman in one vote to change that situation.

Mr. Chairman: I understand that position. It has been said by both sides.

Miss Stephenson: The chairman, after acting as a mediator and a fact-finder, is in that position then required to be an arbitrator, which is the usual pattern of negotiations. I do not think that is terribly unusual.

Mr. Chairman: These are the same arguments I am hearing. I am not hearing anything new. Shall we move to a vote on this?

Mr. Leluk: A recorded vote.

Mr. Chairman: This is a recorded vote. Mr. Davis moved an amendment to the motion to strike out the words "shall not have a vote" and replace them with the words "shall vote in the event of a tie."

The committee divided on Mr. Davis's amendment, which was negatived on the following vote:

Ayes

Davis, Jackson, Leluk, Stephenson, B. M.

Nays

Cooke, D. S., Laughren, Miller, G. I., Offer, Reycraft, Ward.

Ayes 4; nays 6.

Mr. Chairman: With the amendment defeated, we will go back to the motion as written which is,

"(c) A chairman, who shall not have a vote, to be appointed jointly by the minister and the association."

Is there any further debate?

All those in favour of the clause as written will please indicate.

All those opposed will please indicate.

In my opinion the ayes have it.

On subsection 5b(5):

Mr. Chairman: Subsection 5 reads:

"The minister and the association shall agree upon and share equally the remuneration and expenses of the chairman."

Is there any discussion?

There is some interest in knowing just what the fee is. No? No.

Mr. Leluk: Are you applying for the job?

Mr. Chairman: I am looking for work, as long as I do not have to wear that silly hat.

Mr. Jackson: They may want to offer you something to free up another attempt at a by-election.

Mr. Chairman: Wait to see the results tomorrow.

Mr. Jackson: I first raised questions about time lines, which I felt were sort of open and loose. We are dealing with expenses being shared by an association for a time line that lacks definition. It may go on for a year, two years, one month or one day. I have previously expressed interest in time lines because of the processes in which I have been involved with teachers' negotiations. I referred to Bill 100 as having a specific time line. There is an expense and we are asking a group of citizens to partially bear it, and/or the minister will be required to bear it, and potentially, expenses could run large. I know this is not generally a concern of the government, any government.

Mr. Chairman: That is a valid thing to raise, but it is not the kind of thing that would be an appropriate amendment to this section. A new section talking about time lines, to have that kind of protection, if you wished, would be more appropriate.

Mr. Jackson: Let me phrase it another way. If the expenses were to be borne by the ministry, there might be some impetus to compress the time line a little more. That is another way of stating my concern.

Mr. Chairman: An amendment to make that the effect would be appropriate. I am just talking about ways it would be appropriate to put time lines into this subsection.

Mr. Jackson: I would seek assistance from our resident counsel to effect an amendment whereby the ministry would be responsible for the expenses and remuneration.

Mr. Chairman: It could be, "The minister shall assume the expenses of the chairman."

Mr. Jackson: You will not come up with any time lines. You are going to let it run at large. That is irresponsible.

Mr. Chairman: There is some deliberation about perhaps writing down some words that are appropriate for this. Pipers, tunes and paying for it and all that kind of thing are often raised, given the position as it is laid out here.

Miss Stephenson: Why do judges seem to be in a different class?

Mr. Chairman: That is a good question. I do not know.

Miss Stephenson: I would like to know. Why are judges in a different class? They are considered to be totally (inaudible.) When the Minister of Labour (Mr. Wrye) appoints someone and pays for that individual as the chairman of an arbitration commission, there is no question.

Mr. Chairman: I do not know, but it is something which is often assumed in this fashion, rather than assuming the independence and society as a whole paying for it or whatever. Are there any suggestions from legal counsel on the intent of Mr. Jackson's amendment? How about the following as something that might be helpful, Mr. Jackson? "Remuneration expenses of the chairman shall be paid for by the minister"? Would that meet your desires?

Mr. Jackson:?? Yes.

Miss Stephenson: Why not say, "by the government"?

Mr. Chairman: It is usually done under the minister's budget.

Interjection: Of that ministry.

Mr. Jackson: All right.

Mr. Chairman: I am told that in terms of legal wording, because "the minister" is a defined term, this would be a more useful wording.

Mr. Jackson: He lacks definition in this committee.

Mr. Chairman: We could put "deputy minister" instead.

The motion is by Mr. Jackson.

Mr. Jackson: I move that motion.

Mr. Chairman: It replaces the present subsection 5 with the following: "The remuneration expenses of the chairman shall be paid for by the minister." Is there any further discussion? We have already had some on the reason for this.

Mr. Davis: Would you like to consult with him?

Hon. Mr. Elston: The usual reason that was put in there was that generally, as you said, people like making joint appointments to bear joint responsibility for paying, on the assumption that if there is joint contribution, there is a feeling of a little bit more independence.

I have no real concern. If it is the feeling of this committee that it wants the chairman to be wholly paid by the ministry, I am not averse to that. I felt a sharing of expenses, which is what occurs under the model from which this was taken, indicated a clearer situation of independence. If you want it that way, I am prepared to accept it.

I am not sure, is it 'minister'?

Mr. Chairman: "Minister's."

Hon. Mr. Elston: If that is the way it would appear, it would come out of the minister's budget.

Mr. Chairman: That would mean it would have to come out of the minister's budget.

Hon. Mr. Elston: Can it come out of the ministry? Why do we not say "ministry"? I would prefer it, because then it could come out of the operations budget.

Miss Stephenson: I think it would be delightful if we take it out of the minister's allocation.

Hon. Mr. Elston: It certainly would, and I have been taking a look at ministers' allocations for their offices.

Mr. Jackson: That would make it done in a reasonable time.

Mr. Chairman: To clean this up totally we would add, "by the Ministry of Health."

Hon. Mr. Elston: I am a little more comfortable with those words.

Mr. Chairman: The point that is being raised here--not to enter the debate much but just to indicate that this whole notion of independence and also the desire to come to some sort of determination--is that having some pressure on time is maybe greater when two sides are sharing the cost of a person who is involved, rather than it being paid by just the one side. People may end up questioning why a chairman came through with a certain ruling at a certain time and that kind of thing. I would raise that as a caution on this.

Mr. D. S. Cooke: That was the point. While the minister may be willing to pick up the costs, and there may be no implications in terms of how the negotiating process works, I really think there is a principle involved here. The principle is that we have an independent chairperson. That chairperson should have half the cost picked up by the ministry and half the cost picked up by the other party to negotiations.

Mr. Chairman: Why do we not discuss this a little bit further?

Mr. Laughren: I am also concerned about the government's attempts to always put more cost on the public sector. It seems to me there is a legitimate sharing here. It is legitimate in principle, and it is legitimate in practice.

Mr. Davis: Are you wearing red ties?

Mr. Laughren: What I do not understand is why the Conservatives seem to feel the public sector always has to pick up the tab. This is an ideal opportunity for an appropriate sharing of costs, and I think we should not change the section from the way it is.

Mr. Davis: I will remember that.

Mr. Chairman: I love the way these arguments are developing from the sides. It is wonderful.

Miss Stephenson: It is terribly interesting that the model from which this has been derived was one established by the previous government in which there is sharing of the cost. The cost is probably much higher in that one.

Mr. D. S. Cooke: So why are you changing it?

Miss Stephenson: You are not permitting any kind of flexibility, a time-frame limitation or any modification which ensures that the unique problems of pharmacy are dealt with uniquely instead of being dealt with on the basis of a model established for another kind of negotiation.

Mr. Chairman: Order. I think we are ready.

Hon. Mr. Elston: I spoke to representatives of the Ontario Pharmacists' Association, and they have advised they would not feel abused by a situation in which the ministry paid the expenses of this independent chairman. I have no problem with that.

Mr. Laughren: It is the public sector again. It is always the public sector picking up the cost.

Mr. Chairman: All right. Do we understand the motion?

Mr. Laughren: I do not want to hear you guys complain about public sector spending.

Mr. Chairman: The motion indicates that subsection 5 would be replaced with a new subsection 5, which would read, "Remuneration and expenses of the chairman shall be paid for by the Ministry of Health."

All those in favour of the motion please indicate.

Those opposed?

Motion agreed to.

On section 6:

Mr. Chairman: I have been informed that there are some meetings taking place at noon to which some members have to go. What time do you want to come back this afternoon? I know you are all a little pressed. I presume you have the agreement of the NDP on this. You want to come back at 4:30 p.m?

Mr. Jackson: That is when the game will be over.

Mr. Chairman: May we return a little before two, is that possible? Two o'clock it is.

The committee recessed at 11:55 a.m.

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STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT

THURSDAY, APRIL 17, 1986

Afternoon Sitting



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Johnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Cooke, D. S. (Windsor-Riverside NDP)

Bernier, L. (Kenora PC)

Davis, W. C. (Scarborough Centre PC)

Jackson, C. (Burlington South PC)

Miller, G. I. (Haldimand-Norfolk L)

Offer, S. (Mississauga North L)

Reycraft, D. R. (Middlesex L)

Stephenson, B. M. (York Mills PC)

Swart, M. L. (Welland-Thorold NDP)

Ward, C. C. (Wentworth North L)

Substitutions:

Laughren, F. (Nickel Belt NDP) for Mr. Swart

Leluk, N. G. (York West PC) for Mr. Bernier

Clerk: Carrozza, F.

Staff:

Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of Health:

Elston, Hon. M. J., Minister of Health (Huron-Bruce L)

Bernstein, D., Director, Legal Services Branch

Psutka, Dr. D. A., Assistant Deputy Minister, Emergency Services, Laboratories
and Drug Programs

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Thursday, April 17, 1986

The committee resumed at 2:02 p.m. in room 151.

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT
(continued)

Consideration of Bill 54, An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs; and of Bill 55, An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs.

Mr. Chairman: I call the meeting to order. I have some basic information for members before we proceed. It will not be possible for us to meet next week. I was talking to our House leader and told him that Mr. Jackson would be very upset about this.

The committee is effectively dissolved as soon as the House reconvenes on Tuesday.

Miss Stephenson: I do not dissolve effectively. I do not know about you, but--

Mr. Chairman: It sounds like you are dissolving before my very eyes.

Mr. Jackson: It is not for the want of active ingredients, Mr. Chairman.

Mr. Chairman: At any rate, it is not possible for us to have a motion to sit on the Wednesday to put in time so we will be able to deal with it. It cannot be done; we cannot sit next Wednesday. There will be no sittings next Thursday either, as I understand it. In general, the House will close for the Passover. At least, for our committee's purposes, the next meeting we will be able to have will be on Monday, April 28, after Orders of the Day. That is the earliest we will be able to meet again on this subject.

There is another thing that I have been asked by Hansard. We had a casual comment this morning about something appearing in Hansard. I was informed that we are going to have trouble picking up anything very clearly out of our Hansard reports if we all continue to speak at once. Hansard has great difficulty in determining what anyone is saying when everybody is speaking. So, if I can, I will continue to try to remind members that we speak one at a time; wait until the orange light is lit on the mike in front of you and speak into it. That way your words will be carried for posterity and you will be able to call the chairman to account later on for the things he has misinterpreted. But, at the moment, we may not get anything in Hansard if it continues this way.

Mr. Jackson: But quoting you will not be as much fun as under the present circumstances.

On section 5:

Mr. Chairman: Let us move on, if we might, to subsection 5b(6) which reads, "The minister or the association may, by notice in writing to the other, require that negotiation of the fee be conducted by a fee negotiating committee."

Is there a discussion of this subsection? This follows, of course, from the passage of subsection 5b(2). It essentially allows either side to request in writing that the formal negotiation processes be established and the membership to be as is indicated in the previous two sections.

It is making sure everybody has time to understand what is happening. All right. I will call the vote then on subsection 6.

All those in favour of subsection 5b(6) please indicate.

All those opposed, please indicate.

Subsection 5b(6) agreed to.

Mr. Chairman: On subsection 5b(7), "Not later than seven days after the notice has been received, the minister and the association shall each appoint three persons to serve as members of the fee negotiating committee and shall jointly appoint a chairman of the committee."

Is there any discussion? There is a seven day provision. I may not be able to be available within seven days. This is one concern you may have.

Miss Stephenson: You are dreaming.

Mr. Chairman: In technicolour. Is there no further discussion? We will then take a vote on this.

All those in favour of subsection 5b(7), please indicate.

All those opposed will please indicate.

Miss Stephenson: I am having a problem with this.

Mr. Chairman: This is subsection 5b(7).

Subsection 5b(7) agreed to.

On subsection 8:

Mr. Chairman: On subsection 5b(8), "The committee shall begin its negotiations as soon as reasonably possible on a date to be named by the chairman." That is not very controversial.

Mr. Jackson: We are moving into subsections 8, 9, and 10--

Mr. Chairman: That will be the order in which I will go.

Mr. Jackson: You had a good walk, did you not? --and possibly subsection 11 in order to be consistent. It deals with two issues, a time and making it public. I was wondering if we could get into some discussion and clarification on those two points now that we are at the sections those are on.

Miss Stephenson: That begins after subsection 9, I think.

Mr. Jackson: "As soon as reasonably possible" is a reference to time. I would like to talk about time in the context of this process since I am not totally familiar with it. I have done mediation, arbitration and fact-finding; I have never done one of these. I would like to know time lines because I have expressed concern about protracting these types of negotiations.

2:10 p.m.

Mr. Chairman: I understand your point. I will have to restrict you, though, to the initiation of the process subsequent to the election or appointment of a chairman, that is all. If you can deal with it in those terms, in terms of the time you think should be made available to the chair to initiate this, or however you would like to see it initiated, that would be the appropriate way to deal with it under subsection 8. Did you want to try to deal with it in larger terms than that?

Mr. Jackson: No, I want to get into a general discussion on how the ministry foresees the operation of the plan. If the model for the Ontario Medical Association is appropriate, then may we have some examples of the time lines that were in place for that?

Mr. Chairman: We are now at subsection 8, which says things can get started at a time the chair reasonably thinks is appropriate. How would things flow?

Hon. Mr. Elston: Currently, what happens with the association and with the government is that a letter is exchanged, either from the association or from the government to the other party saying: "I think it is time for us to get ready for discussions for X date. When can we meet to set the thing in motion?" That is really what happens. Then they meet and say, "We have to get at it," and the chair is appointed.

With respect to the last set of negotiations we had with the medical association with respect to the schedule of benefits, it was not necessary to get into the extra mechanisms of having all these people officially appointed, although they sort of were, I guess. In some way they are almost standing--

Miss Stephenson: It has been a standing committee for about three years now.

Hon. Mr. Elston: Five years. Under the terms of the agreement, that is right. To be quite honest, it was one meeting.

Miss Stephenson: You should not have needed more than one.

Mr. Chairman: That is an example of a comment which may not be picked up on Hansard, unfortunately. It would be useful.

Miss Stephenson: It should not have required even one tenth of one meeting--

Hon. Mr. Elston: You have to have a meeting.

Miss Stephenson: --to accommodate the recommendation that had been made which provided you with a range of from two to three, dependent upon the consumer price index and the rate of inflation.

Hon. Mr. Elston: Those were not the only factors though.

Miss Stephenson: I know it was not the only factor.

Hon. Mr. Elston: We had to work out the mechanism, and we worked out the mechanism in one meeting, which was required.

Mr. Chairman: I am wondering whether we might hold this discussion until we get to subsections 9, 10 and 11; whenever you think it is appropriate, Mr. Jackson.

With regard to the initiation of the process, this seems to be fairly straightforward. If we want to get into another process or some definition of times from subsections 9, 10 and 11, it seems to me that would be the time either to move the amendment or to raise the concerns.

Miss Stephenson: May I ask the minister whether it is the intent of the ministry to appoint a new committee each time negotiations take place or whether there will be an agreement suggested with the Ontario Pharmacists' Association whereby each will have appointed its most experienced negotiators and there will be a term appointment for an independent chairman?

Hon. Mr. Elston: I have not contemplated either of those. I am flexible on it. I would expect that when we first use the mechanism, each will nominate three members, and then if there is some agreement which comes out of that which says, "these people should become a standing group," that is all well and good. I do not necessarily contemplate that here.

For instance, the membership in the association may very well change. I do not know. Some people change as heads of negotiating committees. There may be changes in the ministry and I do not foresee this as going on for ever. I would think it could be changed and it ought to be flexible enough to accommodate change.

Miss Stephenson: If that flexibility is required, then putting a time frame, or a time limit, on the new chairman might defeat the purpose of the joint appointment. The individual who has been jointly selected may not be able to meet the time frame suggested by the legislation.

Hon. Mr. Elston: If he decides he wishes to retire, we would have no alternative but to come together as a group and reappoint.

Miss Stephenson: That is not what I am saying. What I am saying is that if there were to be a rigid time frame inserted in the legislation here, it might impose an inappropriate restriction upon the quality of the program or the quality of the committee which would be established. The jointly-chosen chairman--and that is not an easy task--might not be able to meet the guidelines of the time frame suggested. This is why I asked the question about whether you were talking about appointing a committee or a chairman for a full term or something of that sort. If you were going to do that, you could impose a time frame at the beginning of negotiations.

Mr. Chairman: What we have in force at the moment, and what we have already passed under subsections 4, 6 and 7, would indicate that this is seen as a fresh appointment, at least in the initial stages. I suppose it could also be that, as a habit developed over years, this could become a standing group. Subsection 8 still allows flexibility, because it says "as soon as reasonably possible" according to the chair.

I wonder whether we could move on to further time constraints, if they are a problem people see, until another section. Is there any further discussion of subsection 8? If not, we will take the vote on that.

All those in favour of subsection 8, please indicate.

Those opposed?

The subsection is carried unanimously

Subsection 5b(8) agreed to.

Mr. Chairman: On subsection 9, "Negotiations at impasse: If, after both sides on the committee have negotiated in good faith, the minister or the association believes that the committee's negotiations have reached an impasse, that person, by written notice to the chairman and the other person, may request that the chairman recommend a dispensing fee to the committee."

Is there any discussion on this process around impasse? Hearing none, I bring this to a vote.

All those in favour of subsection 9, please indicate.

Those opposed?

Mr. Chairman: I have to have an indication of the vote each time, if it is all right. I only had yours, Mr. Jackson, unfortunately, and not those of your colleagues. We have 6-3 on that.

Subsection 5b(9) agreed to.

Mr. Chairman: On subsection 10, "The chairman may obtain and use any relevant information that the chairman believes may be useful in formulating the recommendation."

It gives him fairly straightforward, sweeping powers.

Miss Stephenson: It is really redundant, is it not?

Mr. Chairman: I am not sure. We could ask legal counsel about that, if you like. The suggestion, Mr. Bernstein, is that this question of no limitations on the chairman's recommendation is not really required.

Mr. Bernstein: This is just to make it abundantly clear that the chairman is not limited to whatever information or data was generated in the negotiation process itself. That argument is open, and since it may well be that the chairman's recommendation will not be totally acceptable, there may be some attempt to limit him or her to whatever was generated in the negotiation process. That is not the concept.

Miss Stephenson: I am glad we do not have Mr. Bernstein attempting to reduce the size of legislation in Ontario.

Mr. Bernstein: If you gave me that job, I would do that job.

Miss Stephenson: I am suggesting you might try now.

Mr. Bernstein: All right.

Mr. Jackson: If I understand the chairman, there is nothing here that ties the information to the activities of the committee.

Mr. Chairman: Right.

Miss Stephenson: Except the word "relevant."

Mr. Jackson: So there may be no onus on the chairman to share it with the balance of the committee. "The chairman may obtain and use any relevant...believes may be useful in formulating the recommendation."

2:20 p.m.

Mr. Bernstein: Whether that information is to be included in the chairman's report will be up to the chairman as part of formulating his report and recommendations.

Mr. Jackson: I thought we were going to have a public process. If it is not disclosed to the committee and it is not disclosed in the final draft recommendation, then where is it helpful, open and public?

Mr. Chairman: I want to be clear about what you suggest, Mr. Jackson. Subsection 12, which follows, which is the report by the chair of his or her recommendation, does not have to include information as to how he or she came to those recommendations that may have been developed independently. You would like that--

Mr. Jackson: Yes. It could come right out of left field. The label of fairness has been stamped on this process, which is the same label that is put on collective bargaining. There are efforts to determine that information used in any final form decision has been shared with the parties. In no way do I see this tied back.

It will be somewhat hazardous for the chairman to make a final recommendation and start referencing outside comparability and things of this nature between the professions in terms of setting fees comparing doctors to pharmacists. I think that is a matter that should have been discussed in the context of the committee and/or should find its way into the mediator's or fact-finder's report. This is essentially the other label that has been stamped on the chairman's report as a sort of fact-finding or pre-fact-finding mediation, the two processes I am most familiar with.

I am nervous about someone saying, "I have arrived at this decision based on this information, which was handed to me by the ministry last night, or at 2:30 the day before, and I have made my recommendation." There will be notice and so on, but there is nowhere that this information--

Hon. Mr. Elston: You are reaching a little. The role of this chairman, having been jointly appointed by the two parties, is to come up with a series of recommendations, or a single recommendation, of whatever the problem is. He has to put that to the people who are members so they can deliberate upon it. He is not going to come in and say, "You offered \$5 and you offered \$5.50; so I am saying it is \$3.10." He has to have some credibility.

You want to write his report and have him fill in the blanks through legislation. I do not think that is appropriate. He has a role to perform. He is independent. He has to provide the people with a recommendation and it has

to be based on some logic or reason. That is how it would work.

Mr. D. S. Cooke: We might be able to take Mr. Jackson's concern in subsection 12 if we added that when the recommendation is made public, in addition to the recommended dispensing fee being made public, any backup material that has been used by the chairman would also be made public.

Mr. Chairman: Perhaps one of you might start working on that so that you have an amendment when we get to that section.

Hon. Mr. Elston: If there is an agreement, he does not even have to make a report.

Mr. Chairman: It seems to me that would be the easiest place to put it, rather than at this stage.

Is there anything further on subsection 10?

If not, all those in favour please indicate.

Those opposed?

Motion agreed to.

Mr. Chairman: Subsection 11 reads, "The chairman shall recommend the dispensing fee to the committee as soon as reasonably possible after being requested to do so."

Is there any debate?

Mr. D. S. Cooke: Could there be a comment from the ministry as to whether we could put a time frame in there? One of the problems in other processes and other fields is that it takes quite some time for decisions to be made. We may want to put a time frame in there if that is possible. Maybe Mr. Bernstein could comment.

Mr. Bernstein: If I am not mistaken, the time frame for the Joint Committee on Physicians' Compensation is 30 days. It becomes a question of whether, if you have a chairman who is on the point being able to give a recommendation but is not quite ready, the chairman should be required to fit within that Procrustean event.

Mr. D. S. Cooke: I worry about some of the people taking these positions; they are obviously very busy people. Without a time frame, they could take a long time to report. If 30 days seems reasonable, perhaps we could amend this section to say, "The chairman shall recommend a dispensing fee to the committee within 30 days."

Mr. Chairman: Or you could say, "as soon as reasonably possible or within 30 days."

Mr. D. S. Cooke: "Whichever is less." I guess that assumption is there.

Mr. Bernstein: You would put "within 30 days" in subsection 5b(11).

Mr. Chairman: The motion from Mr. Cooke is that subsection 11 be amended to read, "The chairman shall recommend a dispensing fee to the

committee within 30 days after being requested to do so." The discussion is on the amendment.

Mr. Davis: We would be deleting "as soon as reasonably possible." That was a motion I was going to put forth. It is imperative that when the chairman has been asked to do that, the time frame is specific for him so he can come back to the interested parties and they can begin the next process. You would not protract it for ever. For the first time since we started this, I concur with my colleague behind us.

Hon. Mr. Elston: No, that is wrong.

Mr. Davis: Maybe it is the second or third time, but it is not too many. The time frame of 30 days is reasonable.

Mr. Chairman: I am not counting.

Hon. Mr. Elston: It looks like a new union here.

Mr. Davis: No, I do not think so. I am not a Daniel Webster; I did not sell my soul.

Mr. Chairman: Is there anything further on subsection (11)? Let us take the vote on the amendment, which is to replace the words "as soon as reasonably possible" with the words "within 30 days."

All those in favour please indicate. The motion is carried.

The subsection itself, as amended.

All those in favour?

Motion agreed to.

Mr. Chairman: I will read it in first and we will go from there. Subsection 50(12) reads: "If more than seven days have passed from the date on which the chairman's recommendation was made to the committee, the minister or the Ontario Pharmacists' Association may make it public after first giving the other person 48 hours written notice of the intention to do so." This is open for discussion or amendment.

Miss Stephenson: In order to ensure the public has the benefit of all the information, may I suggest an amendment to the fourth line beginning with "the minister or the Ontario Pharmacists' Association may make public the recommendation and all the information upon which it was based after first giving the other person 48 hours..." Does it really have to be 48 hours?

Mr. Chairman: Let us do it one at a time. What was it?

Miss Stephenson: "Any information upon which it was based." If you say "any," that can be made selective. It would be better if it were "all the information upon which it was based."

Mr. Chairman: Legal counsel has a concern to speak to.

Ms. Baldwin: I do not know if Mr. Bernstein will want to speak to this. I am not sure it has happened yet in the structure of the bill that the association and the minister will have this information. They will have received the recommendation from the chairman, but--

Miss Stephenson: We are suggesting that as a result of that kind of recommendation, the chairman will have to provide both the ministry representatives and the OPA representatives with all the information at the time he makes the recommendation. It was suggested by the chairman that instead of putting the amendment in the earlier sections, we could resolve the problem by putting the amendment in this section.

Mr. Chairman: I wonder if this would help the problem that counsel is talking about. We could move your wording to follow "the chairman's recommendation and any information upon which it is based, was made to the committee, the minister...." We could put it in there and that would guarantee that the onus is on the chairman.

2:30 p.m.

Miss Stephenson: That would guarantee that everybody has it. I also want to guarantee that the public has it.

Hon. Mr. Elston: We could have that in both sections.

Miss Stephenson: Then we would have to go back to the previous sections.

Mr. Chairman: No, we could word it twice within this section, I suppose. Let us have a look at this for a second.

Mr. D. S. Cooke: Would it not make sense that in order to encourage both parties to accept the recommendation, they probably should have the documentation and then release the whole package if each party does not agree? It probably should be in both sections.

Mr. Davis: We could say, "If more than seven days have passed from the date on which the chairman's recommendation was made to the committee"--it says nowhere he has to give you that information--"he shall then forward to the minister and the Ontario Pharmacists' Association the recommendation and all information upon which it was based and they shall make it public after first giving...." We could say "may," but I think "shall" is better.

Miss Stephenson: We are trying to solve a problem which arises after the recommendation has been made to the committee. Legal counsel is absolutely right. We have to make some reference to that information earlier.

Mr. Chairman: The section we are dealing with is all based on fee. Legal counsel is suggesting that we go back to the end of subsection 5b(11) and add the words, "and shall provide the committee with the information upon which the recommendation is based." Then we would come back to subsection 12 and move the other motion.

Miss Stephenson: Fine, and then we can repeat it in subsection 12. You require agreement of 75 per cent of the committee to reconsider.

Mr. Chairman: I read consensus that I am to reopen subsection 11, from everybody but the Minister of Health, but he is not a member so that does not matter. Subsection 5b(11) is open.

Miss Stephenson moved "and shall provide the committee with the information upon which the recommendation was based," to follow the final words of the subsection.

Mr. Chairman: All those in favour of Dr. Stephenson's amendment please indicate.

Motion agreed to.

Section 11, as amended, agreed to.

Mr. Chairman: We will now go to subsection 5b(12) which I hope you will say has been read. Would you like to move your motion again?

Miss Stephenson moved that the subsection be amended to read "...the minister or the Ontario Pharmacists' Association may make the recommendation and the information upon which it was based public after first giving the other person...."

Mr. Chairman: All those in favour of the amendment please indicate.

Motion agreed to.

Miss Stephenson: Now may I ask why it is necessary to require 48 hours' notice?

Hon. Mr. Elston: In fairness, when you send notice, you give the other side a couple days' leeway to look at the information. They may wish to talk to the other party in that time.

Miss Stephenson: They have had that information for at least seven days and you would have had it for seven days as well.

Hon. Mr. Elston: It may take them a little longer.

2:40 p.m.

Miss Stephenson: We have now required this by subsection 12. Therefore, I really wonder why it is necessary to provide for 48 hours notice, which is silliness.

Hon. Mr. Elston: It gives the parties time for sober second reflection.

Mr. D. S. Cooke: If I remember correctly, there is something similar to this in Bill 100. The teachers were negotiating, and as a former principal--

Mr. Chairman: Excuse me, I remind the members when more than one member speaks it becomes difficult for Hansard, especially when the lights get turned on and Hansard is receiving all of us. Mr. Cooke, was speaking and then I will recognize other people to speak after that.

Mr. D. S. Cooke: And, my light is on.

Mr. Leluk: But nobody is none.

Mr. Chairman: Anything further, Mr. Cooke?

Mr. D. S. Cooke: The point I was going to make is that when one side gives notice he is going to make the information public, I think it is an additional incentive and the other party would have 48 hours to decide whether it wants that information to be made public or would like to resume

negotiations and come to an agreement. It is an extra step that can be useful and has helped on some occasions with teacher-board negotiations.

Mr. Jackson: The corollary to this is that on occasion it allows one party to go to the media with its message in advance of the other. The 48 hours provides an opportunity for that, not that either one of the parties in question here would ever consider doing that. However, it has been known to happen, and since we are not going through the Arbitration Acts, where we could address such abuses, why provide a mechanism that might allow for it?

Mr. Chairman: Is there further discussion?

Miss Stephenson: Having had seven full days to consider this and not having reached an agreement, I wonder whether it is not possible that 24 hours would give the parties sufficient time to resume negotiations, if that is what they decided to do after receiving notice.

Mr. Chairman: It is freedom of emotion, if you like.

Miss Stephenson: It seems to me an extra day is baloney. I would move that we delete 48 and insert 24.

Mr. Chairman: The motion is in order and it is understood that we replace the number 48 with 24.

Mr. D. S. Cooke: Let us save it off at 36.

Mr. Chairman: The art of compromise. Any further discussion?

All those in favour of the amendment?

All those opposed?

Motion agreed to.

Mr. Chairman: We go back to the section as amended twice. Is there further discussion on section 12, as amended? Remember, we have two amendments. One is the addition of the information so that can be made public and the reduction of the hours from 48 to 24.

All those in favour of subsection 12, as amended?

Subsection 12, as amended, agreed to.

Motion agreed to.

Hon. Mr. Elston: I would like the committee to know that because you are restricting the time frame so much, Mr. Johnston has removed his application.

Mr. Chairman: Yes. I just do not move that quickly, as you know.

Mr. Jackson: Either that or it is the per diem.

Mr. Chairman: The committee is a cruel group.

Subsection 13 reads: "The committee shall resume its negotiations within seven days after receiving the chairman's recommendation."

Miss Stephenson: Is there not a slight dichotomy here? The committee has received the information and you have allowed seven days to go by. At the end of seven days, if nothing has happened, then notice is given that it is going to be made public and then you say the committee shall resume its negotiations immediately. About what?

Hon. Mr. Elston: It is clear that this gets the people back to the table. They must come back to the table. The fact that the information goes public is not enough. This requirement gets them back to the table and then information is available to the public, which will pressure them to come together.

2:40 p.m.

Miss Stephenson: Then they do not need 24 hours.

Hon. Mr. Elston: No, this says that in terms of putting information into the public, notice of 24 hours is required. This clause merely says that within seven days of receiving the recommendation and information, they must get back together. The other item says if you are going to make the information and recommendation public, you must give the other side 24 hours. They are completely compatible.

Miss Stephenson: My concern is we are saying they must resume negotiations at the end of seven days, but if they have not reached agreement at that time, they can make it public immediately without giving negotiations any opportunity to resolve the problem.

Hon. Mr. Elston: No, they give them 24 hours.

Miss Stephenson: I do not know why the time frame should be exactly the same for both, and I want to know why.

Hon. Mr. Elston: The time frame, to be accurate, is with respect to making the information public.

Miss Stephenson: No.

Hon. Mr. Elston: They are still sitting down and negotiating. I do not think there is necessarily any requirement when they get together after the expiry of seven days that the information automatically go public. If they find, because they are required after seven days to sit down, that they are moving along in their negotiations, there is no need to give notice they are going to make the information public. It can remain as part of the internal negotiations. However, if there is an impasse with respect to any progress on negotiations, then the ministry or the association can say, "Okay, since we seem to be having a little more difficulty here, let us make the information public." That is completely open to them.

Miss Stephenson: I hate to suggest it might be reasonable to offer the committee a little time regarding the public announcement of details, before the time frame runs out.

Hon. Mr. Elston: In fairness, this mechanism is designed to keep the pressure on the committee. They have seven days to review. They must sit down together in seven days. If after the first meeting someone finds it is not useful, the public information lever is available to make sure the two sides are dealing in good faith. Public pressure is designed to do that.

Mr. Chairman: We seem to have a difference of opinion. It is open to amendment if an amendment is to be proposed.

Seeing no amendment at this point, and no conference, I presume there is not going to be one. It is hard for me to read minds, even my own.

The motion then adds to section 5b:

"(13) The committee shall resume its negotiations within seven days after receiving the chairman's recommendation."

All those in favour please indicate.

Those opposed?

Motion agreed to.

Mr. Chairman: Mr. Ward moves that the bill be amended by adding the following subsection to section 5b:

"(14) If, at any time in the negotiating process, a majority of the committee, including at least two persons appointed by the minister and at least two persons appointed by the Ontario Pharmacists' Association, agree on the appropriate fee, the chairman on behalf of the committee shall submit that fee to the minister and to the Ontario Pharmacists' Association as the committee's recommendation."

We have had a fair amount of discussion on the thought behind this. Any more discussion or questions? This is instead of the straight majority approach.

Seeing none, all those in favour of subsection 5b(14) please indicate.

Those opposed?

Motion agreed to.

Mr. Chairman: I presume that was unanimous.

Hon. Mr. Elston: Was that a complete show of hands?

Mr. Chairman: It was almost a complete show of hands.

Interjection: Why do you not make that a recorded vote?

Mr. Chairman: It is too late now.

Mr. Ward moves that the bill be amended by adding the following subsection to section 5b:

"(15) The minister and the Ontario Pharmacists' Association shall notify each other in writing of their acceptance or rejection of the committee's recommendation within seven days after receiving it."

Mr. Davis: If one of the groups rejects it, what happens?

Hon. Mr. Elston: They do not accept it.

Mr. Davis: I understand they do not accept it, but then what happens?

Mr. Chairman: Under subsection 15, they must notify each other of that.

Mr. Ward: Then subsections 16, 17 and 18 apply.

Mr. Davis: That is correct.

Mr. Chairman: That is all I can deal with at the moment, because I am at subsection 15.

Mr. Davis: What happens if you have one side saying it has rejected the process? Let us assume for a moment it is the OPA. Does the minister then go ahead and move under clause 5b(18)(c) or what? It does not say what happens when one side rejects it. At least I do not see it.

Hon. Mr. Elston: Subsections 16, 17 and 18.

Mr. Bernstein: The ultimate avenue, as provided for in clause 5b(18)(c), is that the dispensing fee will be prescribed by regulation.

Mr. Chairman: I prefer at this stage to keep these things separate and distinct, if we can. What we have in subsection 15 is the notice that must be given if you do or do not agree. That must be done within seven days. If we could confine the discussion to that at this stage, all these other matters, whether we want other steps in or not, will come into place as we move to the next several items.

Mr. Davis: Your point is a fair submission, except that if you do not try to debate what happens when both parties say no, or at least get clarification on that, it could determine where we are going to go. We may want to make an amendment to that section to say what happens if one party rejects it. I heard the minister say that subsections 16, 17 and 18 would come into effect, but it does not say that.

We may want to say that after one party has rejected it, then whoever it is--I do not know whether it is the minister or the chairman--shall call both sides back together again to resume the negotiations.

Mr. Chairman: I am not trying to cut off that debate. At the moment, this is only a notification subsection.

Mr. Ward: Why do you not make an amendment that they do not tell each other?

Mr. Chairman: Excuse me, Mr. Ward. You can either amend the existing subsection or you can suggest new additional subsections to be placed following that. However, we should deal with subsection 15 as the notice of happiness or lack of happiness with the negotiation and then deal with that. That is the easiest way. Is there anything further on the seven-day provision, which is essentially what we are talking about here?

All those in favour please indicate.

Those opposed?

Motion agreed to.

Mr. Chairman: I will read subsection 16, but at this stage it may be that people want replacement or amendment. Mr. Ward moves that the bill be amended by adding the following subsection to section 5b:

"(16) If, after both sides on the committee have resumed negotiations in good faith, the minister or the Ontario Pharmacists' Association believes that the committee's negotiations have again reached an impasse, that person, by written notice to the chairman and the other person, may terminate the negotiations."

2:50 p.m.

Miss Stephenson: Can I ask Mr. Bernstein or somebody what that means? Where is this in the time sequence? Have they accepted or rejected? Has the committee been brought back? Are there negotiations going on after acceptance or after rejection? What is this supposed to be?

Mr. Chairman: Who would like to try to answer?

Hon. Mr. Elston: I can provide an answer to that. If there is no movement and if there is nothing appearing, then either party can say that is it, as far as the negotiation process is concerned.

Miss Stephenson: We have just said we require the committee to come back after the announcement of the suggested fee--

Hon. Mr. Elston: The chairman's report.

Miss Stephenson: The chairman's report. They must discuss and negotiate and they "shall notify each other in writing of their acceptance or rejection of the committee's recommendation within seven days after receiving it." Having done that, are we saying that the committee must come back together after that rejection? What are you talking about as far as this is concerned?

Hon. Mr. Elston: It is clear that when the committee--

Miss Stephenson: No, it is not clear, but go ahead.

Hon. Mr. Elston: In this situation, this subsection says if the committee members are together in good faith after the report of the chairman and there are no further proceedings coming on, then they can terminate it. For instance, the committee members may not be able to agree upon the recommendation; there may not be a recommendation to make out of the committee, on the basis of the chairman's report, that can be sent to the minister or the association; the committee may choose not to make a report.

Mr. Jackson: Then there is an old report.

Hon. Mr. Elston: Then there is no report and at that stage notice in writing--

Mr. Jackson: No, there is an old report.

Hon. Mr. Elston: They may not even agree on that.

Mr. Jackson: Then you have to--

Mr. Chairman: Order, Mr. Jackson. I do have a list.

Mr. Jackson: You did not recognize me when I asked you to recognize me on subsection 15.

Mr. Chairman: I made a ruling--

Mr. Jackson: No.

Mr. Chairman: Just a second, Mr. Jackson. I made a ruling about how we were going to deal with subsection 15. There was an agreement that we would deal with it; we then voted on it and passed it. I then said, "As we get into subsections 16 and 17, we can raise any of these other things." I looked around and Dr. Stephenson caught my eye, so I recognized her first.

Mr. Jackson: I advised you I had an amendment to subsection 15.

Mr. Chairman: I am happy to put you on the list with an amendment. That is fine.

Mr. Jackson: I had an amendment to subsection 15 which you did not recognize.

Mr. Chairman: I gave you your chance to speak on it. I hesitated a good time. I wish you had spoken up on it.

Mr. Jackson: Continue.

Mr. Chairman: If you want to re-open it, do say so.

Mr. Jackson: No.

Miss Stephenson: We are talking about a situation in which a rejection of the recommendation has been received.

Hon. Mr. Elston: My reading of the section is that it is there to provide an outlet where the committee is unable to make a recommendation at all to the minister and to the association. It may be a problem in terms of placement of the section; it may be out of sequence or whatever.

Mr. Bernstein: I am not sure it can be arranged any better. Probably it can, but the sequence really starts with subsection 14. First, the negotiating committee comes to some kind of concurrence and makes a recommendation to the parties; then subsection 15 takes over and puts an obligation on the minister and the OPA to respond.

That response is in the form of notifying each other whether they accept or reject the recommendation of the committee. Having completed that part of the matter, subsection 16 deals with what happens when the committee, having engaged in negotiations, does not agree and make a recommendation to the parties.

Mr. Reyecraft: We could clarify the matter by amending subsection 16.

Mr. Chairman: Mr. Reyecraft moves that subsection 16 be amended by adding after the words "good faith" the words "as provided for in subsection 13." The motion is in order and that is now what we are debating.

Miss Stephenson: It is my understanding that subsections 15 and 16 do not necessarily apply to subsection 13. They apply to the circumstance in subsection 14, which is that if, at any time in the negotiating process, a majority of the committee comes to an agreement and produces a recommendation, then you do not get to the mess where you have to have the chairman deciding upon a recommendation to make to the committee. It is the disorganization of sequence that leads to a certain degree of confusion about what the hell is going on.

Mr. Chairman: Do you recommend, therefore, that in addition to what Mr. Reycraft is suggesting, the placement of the amended subsection 16, if it were renumbered as subsection 14, would meet the difficulty in ordering? The problem relates to subsection 15 as well.

Miss Stephenson: Subsection 14 should be subsection 9 because 14 suggests that at any time during the negotiating process, when two members from each side agree, that is a committee report.

Mr. Chairman: Are you suggesting--I know it is not a motion at the moment--we might change the order of this so subsection 16 becomes subsection 14 and subsection 14 becomes subsection 16?

Miss Stephenson: I suggest that subsection 14 becomes subsection 9.

Mr. Chairman: It could come in either place then.

Miss Stephenson: The time for subsection 14 is when you get to negotiations.

Mr. Chairman: I sense there is a consensus on the problem we have here.

Miss Stephenson: It is the solution we are after.

Mr. Chairman: There is a suggestion from legal counsel that it would be easier if subsection 14 followed subsection 16, as amended, I presume.

Miss Stephenson: If we go this route, we are presuming there is not going to be a solution. We are presuming the first thing that will happen will be disagreement and the committee chairman will have to produce a report. Subsection 14 says that the committee can produce a report, which is what you are trying to do in the first place, is it not? If you move subsection 14 to subsection 9 and move the others down in sequence, it seems to me that would solve the problem. Subsection 16 could quite reasonably follow where it is.

Mr. Chairman: It seems to me, although I may be wrong, we have the option of putting it in either location and still have what we are after handled, that is, that subsection 14 allows for a decision to be made by the committee before or after a chairman makes a recommendation, and therefore, it could come before or after we talk about the chairman's recommendation.

I am in your hands as to which of those two you prefer, but it makes sense to me that we have some kind of a renumbering to place this either after subsection 16 or after subsection 9. Is that before or after 9? It probably goes before 9.

Miss Stephenson: It would become subsection 9.

Mr. Chairman: It would become the new subsection 9.

Miss Stephenson: Subsection 9 would become subsection 10.

Mr. Chairman: I will be guided by you as to which you prefer. Do you want to move that?

Miss Stephenson: I move that subsection 14 be renumbered subsection 9.

Mr. Chairman: I cannot take that at the moment. I will have to take that back because we are dealing with--

Miss Stephenson: We are dealing with that other one.

Mr. Chairman: --an amendment to subsection 16. Any discussion of subsection 14 is not in order at the moment. We will deal with the motion as it is presented, the current amendment I have from Mr. Keycraft on subsection 16. Let us clean that up and then we will do the re-ordering.

Just to remind you, Mr. Keycraft's motion was to add the words "as provided for in subsection 13" after the words "in good faith."

Mr. Davis: Mr. Keycraft should withdraw that because I do not think it is applicable. As I read 16, I recognized that is what it related to. The concern I raised was what happens in subsection 15. The suggestion of renumbering might make it a little bit clearer, but I still think subsection 15 may impinge on 16. I will have to look at it again.

3 p.m.

As I read it, I had no problem understanding that 16 related back to 13, when the committee chairman said, "Hear my recommendation and come back and talk about it." I do not want it to get muddier than it is, but I was having trouble with 15 which says, "Now you have rejected it, what happens?" As I read it, 16 did not say that they must come back together. That is a problem I would like to clean up later, but if Mr. Keycraft would withdraw his motion, I think Dr. Stephenson's amendment would solve it very quickly by just renumbering and it falls into a sequence.

Mr. Keycraft: I finally get to speak to my amendment.

Mr. Chairman: You did not ask to.

Mr. Keycraft: I thought that was automatic. Mr. Davis has explained why the amendment is appropriate. His suggestion about withdrawing may be a good one if we are going to renumber--if for no other reason--then 13 is probably going to become 14.

Mr. Chairman: Yes, exactly. That is an excellent reason to withdraw. Thank you very much, Mr. Keycraft.

Do you want to continue the debate on 16 at this point, which is what we are dealing with now, or do you want to stand it down while we go back and do some reordering?

Miss Stephenson: Could we stand it down and renumber first?

Mr. Chairman: Okay. Shall we do that? Good. We have general agreement on that.

Miss Stephenson moves that subsection 14 becomes subsection 9 and that subsection 9 and the subsections thereafter be renumbered appropriately.

Mr. Chairman: The motion is understood. Any comments?

All those in favour of the motion, please indicate.

Motion agreed to.

Mr. Chairman: I would like to come back to Mr. Jackson to see whether he would like to reopen subsection 15, with the consent of the members, which I presume I have.

Miss Stephenson: I remind the committee that in subsection 15, the acceptance or rejection applies to both the decisions that are mentioned before; either the decision that is made by the committee as a result of negotiation, where two and two have agreed and therefore it is a committee recommendation, or to the impasse which was reached, which was resolved by a recommendation made by the chairman, which then has to go back to the committee for negotiation or discussion. If what is written there encompasses those two situations appropriately, then subsection 15 is all right. However, it does not provide for a vehicle to deal with the rejection of the recommendation of the committee at the present time.

Mr. Chairman: Subsection 15 does not deal with that; I agree. It is, as we discussed earlier, only the question of the seven-day biblical approach to things. That is all. I was asking before, when we were dealing with this, whether it is appropriate to add anything to that. Should we not be thinking, if you want something further, of either a separate subsection or some further amendment later? It is beginning to sound to me that you need a separate subsection, which is neither 15 nor 16.

Miss Stephenson: If we have a separate subsection and then we go on to 16, which allows people to terminate negotiations, I do not know where the hell we are, if I may say so. I guess the termination of negotiations can occur only after we have been through all those steps.

Mr. Chairman: Yes.

Miss Stephenson: However, in subsection 5b(16), we do not know when they resume negotiations, except in the circumstance where they have received the chairman's report. That said they had to go back if there was a rejection of the other report.

Mr. Chairman: I want to be clear about whether we have finished with subsection 5b(15).

Miss Stephenson: I do not think we are.

Mr. Chairman: You do not think so.

Miss Stephenson: Subsection 15 provides us with an incomplete mechanism for which we have no steps written into the act at present.

Mr. Chairman: My suggestion would be that subsection 15 is just a notice section. If you wish to have subsequent steps, it is much easier to put in a new subsection 16 to deal with those steps. It would be nice and clean to have a notice section in 15 and then, if you wish, to make what would

be--perhaps this is what you are working on, Mr. Leluk; I am not sure--an amendment as a new subsection 16 as your next step. Why do you not suggest an amendment?

Mr. Leluk: My question is with the seven-day period. I am advised--and I stand to be corrected if I am wrong--that according to the bylaws of the Ontario Pharmacists' Association, there must be ratification by the membership of its acceptance or rejection. This would be impossible to do within seven days, because the membership would have to make the decision to accept or reject it. I wonder whether the minister took that into consideration. I see I am getting a look here from the deputy minister.

Hon. Mr. Elston: Mr. Leluk, if they require some time further than that, I am quite prepared to help them comply with the bylaws. Meetings have been held on short notice, but it is not my intention to make them hold meetings in violation of their bylaw requirements if they need some more time to make a suggestion.

Mr. Chairman: Again, we are at subsection 15. As we change the 48 hours to 24 hours, it is quite possible to propose an amendment, Mr. Leluk, which would encompass the concern you are raising, if you would like to do so.

Mr. Jackson: It is not productive to put it in that form. We should not be amending a bill if it is not a concern. We know the minister did not have appropriate time to provide the details to the group. For the fourth time, we have not heard from the group, and I hope you would allow one representative from the OPA to approach the committee to advise us on this matter. I am sure that would take less time than it would for us to play around with an amendment, especially in the light of the fact that it may or may not be of any relevance.

Mr. Chairman: Again, I am in your hands on that if you wish to suggest it. We have had a day now since this has been out. In the lobbying and discussions that have been going on, I wonder whether you have heard some indication that there might be a problem. Do you have a time for us that we could offer?

Mr. Leluk: If it is to be corrected, I would like to see some input from the organization itself.

Mr. Chairman: The recommendation is being made by Mr. Jackson that we bring the OPA before the committee to find out its concern on this matter.

Mr. Leluk: Whether there is one or not.

Mr. Chairman: Any discussion? Is there consensus on this?

Mr. Jackson: Mr. Cooke will advise us in a moment, Mr. Chairman.

Mr. Leluk: He is the chief negotiator.

Mr. Jackson: He is the chief negotiator. Are we inviting somebody to the table or are we going to wait until Mr. Cooke has finished?

Mr. Chairman: I was not sure whether you were being facetious or straightforward.

Mr. Jackson: I have put a motion forward.

Mr. Chairman: There is a motion on the floor that the--

Clerk of the Committee: Not a motion; it has to be a recommendation.

Mr. Chairman: It is just a recommendation. I cannot take it. That is correct. Thank you very much.

Mr. Laughren: Why do we not wait to hear from the representative of OPA?

Mr. Chairman: Do I have a consensus?

Mr. Davis: Take a five-minute break.

3:10 p.m.

Mr. Chairman: Have you any opinion on this, Mr. Cooke?

Mr. D. S. Cooke: I gather the problem is that it is not necessarily in the bylaws, as Mr. Leluk said. It is a process they go through to the council and then the council either rejects it or, if it accepts it, it goes to the membership. The membership is done by mail referendum. We are going to have to decide what is practical. That means the convention they have followed in the past, not their bylaws, will have to be changed in order to meet the new realities of the legislation. Seven days is probably unrealistic if you have to have a council meeting as well as a membership meeting, but it seems to me 14 days would be realistic.

Mr. Chairman: Mr. D. S. Cooke moves that subsection 5b(15) be amended to replace "seven" with "14."

Dr. Dyer: It could be read two times seven.

Mr. Chairman: Yes, in keeping with the biblical approach, we could call this two times seven rather than 14. Almost every number is sacred in one way or another.

Is there any further discussion?

All those in favour of the amendment, please indicate.

All those opposed?

Amendment agreed to.

Mr. Chairman: Are there any further amendments to subsection 15?

All those in favour of subsection 5b(15), as amended, please indicate.

All those opposed?

Subsection 5b(15), as amended, agreed to.

Mr. Chairman: Before reading subsection 5b(16), I will ask if anyone has a suggestion about anything which may pre-empt it.

Miss Stephenson: May I suggest that we deal logically with the wording of 5b(15) and since acceptance precedes rejection, subsection 17 might

then become subsection 16 and we deal with the acceptance mechanism, which is the entering into of a written agreement.

Mr. Chairman: Dr. Stephenson was suggesting, because 17 has to do with acceptance rather than problems of rejection, in the continuing conflict it might be better to have the two numbers changed.

Mr. Bernstein: Subsection 17 does not relate to an agreement with respect to a specific dispensing fee. It relates to the process of negotiation of a dispensing fee and the purpose of subsection 17 is to permit the parties to vary the act if they find a process which is more congenial to them, and to do so by agreement. But that is not an agreement with respect to any specific dispensing fee.

Miss Stephenson: Thank you, that is helpful. Subsection 16 at the current time is inadequate because it does not deal with the concern we should necessarily have if there is rejection of the committee's recommendation, whether that recommendation be the agreed-to recommendation within the committee or a recommendation as a result of the chairman's report.

Mr. Chairman: It would seem to me that among several options you would have available to you, if you think it is inadequate because all it does is go as far as to say that the negotiations may be terminated, would be that you can either amend 16 to add other steps or you could suggest a subsequent section to follow the decision to terminate. I leave that up to you, but if we are going to deal with 16, and I was looking to see if there was something that was going to pre-empt it, let me read it into the record again so that we are clearly dealing with it and then we can proceed from there.

Subsection 16: "If, after both sides of the committee have resumed negotiations in good faith, the minister or the Ontario Pharmacists' Association believes that the committee's negotiations have again reached an impasse, that person, by written notice to the chairman and the other person, may terminate the negotiations."

Is there any discussion?

Mr. Davis: If there is a possibility at that point to incorporate into it--I will need some help to frame it. I understand at that point, the way the bill is now written, if there is a rejection, there is no alternative as it is listed here. It could be that we could go along and say "We have reached an impasse"--I used the word "impasse"--and either party may request the appointment of an arbitrator for the resolution of a problem under the Ontario Labour Relations Act.

Hon. Mr. Elston: Either party?

Mr. Davis: Yes. Or, if you like, I will make it together. At least it gives some determination. When I reflect upon the process that the Health critic of the New Democratic Party has placed before us, saying that he wants a process in which there is dialogue, opportunity and openness to the public, which was echoed by the Minister of Health, all that has been accomplished with the process to this point, and now you are at an impasse again. It seems to me the most appropriate mechanism to deal with that is to bring in a third-party arbitrator to bring in a resolution. I move that as an amendment at this point, to see whether that helps.

Hon. Mr. Elston: What is the amendment?

Mr. Chairman: I will need some help with the wording of it.

Miss Stephenson: The first clause is weird.

Mr. Chairman: It is redundant.

Mr. Davis: Yes. It is redundant. You can do it this way; subsection 16 would read: "If the minister or the Ontario Pharmacists' Association believes that the committee's negotiations have reached an impasse," or "again reached an impasse"--

Mr. Chairman: "Again" would be helpful.

Mr. Davis: --"then either party may request the appointment of an arbitrator for the resolution of the problem under the Ontario Labour relations Act."

Mr. Chairman: Is that understood? It might be useful to write that out for me while we have the discussion. We have basically spoken to it in advance, and I accept that as your explanation for why it is. It is understood that now, rather than subsection 16 just ending with the termination, either party would be able to call upon an arbitrator.

Is there any discussion?

Hon. Mr. Elston: That would get us to the stage where there would be no agreement through the consensus process. If we were going to do something, I would be prepared to consider appointing an arbitrator where there was mutual agreement, but not upon the part of either party.

Mr. Chairman: The minister has suggested, as you just heard, that because of the dangers of one side not wishing to negotiate, in which case you go through a sham prior to that and then go automatically into arbitration, he might be more interested in a mutually agreed upon arbitrator as the methodology. It is not an amendment, because you cannot move one, but it is a suggestion which is being considered.

Mr. D. S. Cooke: If the minister wants to put in something about mutual-agreement arbitration that is fine, although I suggest that subsection 17 already permits that.

Hon. Mr. Elston: That is a possibility, but we are not at subsection 17 yet.

Mr. D. S. Cooke: No, but you do not need that in the legislation. The issue is Mr. Davis's approach or the approach of this total package amendment. We have had the debate before. We are going to support this total package approach. However, I do not think you need to refer to mutually agreeable arbitration; that is provided for in subsection 17.

Miss Stephenson: The concern that there will not be meaningful negotiations as a result of the possibility of a mutually agreed upon arbitrator or someone appointed by the Ministry of Labour, which can happen as well, is not necessarily well founded. The opportunity for arbitration is present in all labour relations in this province. We all know that neither party, in most circumstances, really wants arbitration. They are usually happier to resolve the matter themselves, since they believe that an arbitrator, particularly one appointed by the Ministry of Labour, is not necessarily--

Mr. Laughren: Where were you yesterday?

Miss Stephenson: --I was not here yesterday--one who is well-versed in the particular problems of that circumstance.

Professional associations are not necessarily wildly enthusiastic about arbitrators. Employers are sure as hell not enthusiastic about arbitrators. Trade unions are not either. Therefore, it provides a kind of saddle burr which may ensure that negotiations reach an appropriate stage.

Mr. Chairman: I like your analogy. I can see us moving into horses now. It is great.

Miss Stephenson: I was not looking at either end.

3:20 p.m.

Mr. Chairman: How is your amendment coming along, Mr. Davis?

Mr. Davis: I am still working on it, Mr. Chairman.

Miss Stephenson: There must be some resolution of a second impasse. That is not the kind of situation I think you would like to have in place. The resolution for impasse in other legislation is, in fact, legislation. Do you want to legislate the solution to the impasse, or do you want to allow an independent arbitrator to have at least an opportunity to solve the problem without moving into the Legislature to resolve it?

Mr. Ward: I refer to clause 18(b).

Mr. Chairman: Order. I am having a little difficulty hearing.

Mr. Ward: Clause 18(b) states that the minister and the association otherwise agree to a fee, which I do not think places any limitations in terms or how they arrive at it.

Miss Stephenson: I am not suggesting that they do. What we are suggesting is that if an impasse is perceived by either the minister or the association, there must be a means of resolving it.

Mr. Ward: I am suggesting clause 18(b) does not place any limitations on how to deal with that side of the problem.

Mr. Chairman: I understand the debate, but I do not know what the motion is. Mr. Davis, would you like to restate your motion for us?

Mr. Davis: After I have consulted with my legal advisers.

Mr. Chairman: Mr. Davis moves that subsection 16 be reworded as follows: "If the minister or the Ontario Pharmacists' Association believes that the committee's negotiations have again reached an impasse, either of the parties may request the appointment of an arbitrator to resolve the issue within the provisions of the Ontario Labour Relations Act."

We have had basic discussion on this and I think it is fairly clearly understood.

Miss Stephenson: The only thing that worries me about that is the

fact that there is no time frame related to the rejection of the committee's recommendation. There must at least be a period of time. Subsection 16, as it begins, "If, after both sides of the committee have resumed negotiations in good faith..." does not solve that problem. What we should be saying is: "If either of the parties has rejected the committee's recommendation or the committee has not made a recommendation...."

Mr. Chairman: I wonder if legal counsel could speak to this.

Miss Stephenson: I would be happy to have legal counsel resolve this difficult problem.

Ms. Baldwin: Dr. Stephenson, it may be that now we are getting back to the issue that Mr. Reycraft was making with his motion. Subsection 16 is referring back not to subsection 15 but to the resumption of the negotiations by the old numbering, subsection 13.

I wonder whether there is some confusion resulting from that.

Miss Stephenson: Surely subsection 15 applies whether the committee has recommended it as a result of its own negotiation--as in what is now subsection 9--or whether it has accepted or rejected it on the basis of the chairman's recommendation and the negotiations which must be resumed after that recommendation is received.

Ms. Baldwin: I am ready to be corrected by the ministry, but I think the intent of subsection 15 is to follow up on the one that was immediately preceding it in the paper that we have; namely, where the committee has had that vote, and under the terms of that subsection, the vote has been successful with a majority of two people from each side. At that point, the minister and the association are given an opportunity to accept or reject the decision of that vote.

Mr. Chairman: I gather the counsel is suggesting that by moving subsection 14 up to be subsection 9, we have separated two things that should be together, subsections 14 and 15. That is causing some difficulty. We should be placing them together--either early or after subsections 16 or 17--so there is no confusion on that.

Miss Stephenson: But somewhere in all this, you have to provide for a process that achieves success without the chairman making a report, without impasses and without all types of things. You have not done that.

Ms. Baldwin: Dr. Stephenson, I suggested to the chairman earlier that subsections 14 and 15 come after subsection 16. The purpose of that was that they might refer back to the whole process preceding. The idea would be that at any stage in that process, there might be a vote and an acceptance that would go ahead. Does that deal with your problem?

Miss Stephenson: I am sure it does. It seems to be a peculiarly anatomically incorrect way to deal with these problems. Poor David has no idea which comes first, the chicken or the egg. That is not anatomical; that is just biological.

Mr. Chairman: We may decide to do some renumbering again. However, at the moment we have a motion from Mr. Davis before us which replaces the present subsection 16 with the following words:

"If the minister or the Ontario Pharmacists' Association believes that the committee's negotiations have again reached an impasse, either of the parties may request the appointment of an arbitrator to resolve the issue within the provisions of the Ontario Labour Relations Act."

That is the motion we now have before us for debate or for further amendment.

Miss Stephenson: That defers to rejection in subsection 15, does it not?

Mr. Chairman: No. As I understand it from what we have been told, subsections 14 and 15 are companion sections if we look at the bill properly. They should be kept at the end of the bill or put in before we ever get down to the process of the chairman making his report. As legal counsel is suggesting, either do it early or do it after our present subsection 17 to indicate that this other process may take place at any time. As Mr. Keycraft was saying, subsection 16 refers back to subsection 13.

Miss Stephenson: Good-faith bargaining is supposed to take place at all times. My concern is that this whole section is not logical in terms of sequence. There has to be a better way to present it so that everybody understands what it means.

3:30 p.m.

Mr. Davis: As legal counsel points out, even if subsection 15 is tied to the old subsection 14, we still have the problem that we thought subsection 16 was trying to address. Perhaps some help in the resolution of the problem will clarify the issue.

At any time in the negotiating process, a majority of the committee, including at least two persons appointed by the minister and so forth and so on, makes the recommendation. Then I hear legal counsel saying that subsection 15 comes into play; the minister or the OPA can either accept it or reject it in writing. If it is rejected by one of them, then what happens? There is no resolution to the "what happens?"

Mr. Bernstein: That is the end of the negotiating process.

Mr. Davis: That is the end of the negotiating process?

Mr. Bernstein: There are two ways in which the negotiating process can come to an end. Either the committee never makes a recommendation to the parties because the committee never agrees, or the OPA or the minister does not accept the recommendation of the committee.

Mr. Davis: If I am correct, you are saying that if either one of the parties rejects the committee's recommendation, the negotiations are terminated at that point, and the mechanism of resolution then becomes clause 50(18)(c)?

Mr. Bernstein: That is correct.

Mr. Davis: Subsection 16 is in the wrong place. What should happen is--and maybe I stand to be corrected again--that subsection 15 needs to be expanded in some way so you know you go right to subsection 18 for the resolution. There is no option for them to come back together to talk.

Mr. Bernstein: They can. If you read this very literally, one of the parties could require the whole process to begin again. I imagine that would be thought to be impractical, but it is still there.

Miss Stephenson: I am not sure it is impractical.

Hon. Mr. Elston: That is what subsection 16 is; it is notice of termination of the process. Subsection 16 should say--if it does not clearly say it now--that no party can terminate the process until after the committee has resumed negotiations upon the report of the chairman. If you get that far in the process, nobody can end the process before the chairman has had the opportunity to make a report and you sit down and begin negotiations again. That is what subsection 16 says.

Miss Stephenson: Why does it not say that?

Hon. Mr. Elston: It does say that. You may think the wording is a little bit roundabout, but if we put in Mr. Reycraft's first suggestion, which relates it specifically to getting together again under subsection 13, it becomes much better.

Miss Stephenson: It would clarify it if there were references to the other subsections wherever they are appropriate in here. Without them, this looks like a hotchpotch of unrelated activities.

Hon. Mr. Elston: It is not. You must have subsections dealing with acceptance, and you must have subsections if there are going to be rejections.

Miss Stephenson: Of course you do, but you can at least refer them either by reference of language or reference--

Mr. Chairman: Order. I am afraid we are dissolving ourselves into a morass of information that will not help us a great deal. Legal counsel wishes to say something, and if she does not clear it up, I may try to.

Ms. Baldwin: Having chatted with Mr. Bernstein, something has come up which in part confirms what Dr. Stephenson said. There is some ambiguity in terms of the relationship of these provisions.

My understanding was not what Mr. Bernstein said with regard to subsection 15 if there is a rejection. For example, if there were a vote before the chairman had been asked to make a recommendation and it was either rejected or successful, my understanding was that it would be possible to continue with the process notwithstanding that.

What we need is for me to ask whether it is possible to have the committee's indulgence to work on this overnight and come back with it fixed up.

Mr. Davis: I will move that.

Mr. Chairman: You do not need to. Is there a general consensus?

Mr. D. S. Cooke: Since the Conservatives also want to have a vote on some form of binding arbitration, maybe legal counsel can work on both routes so we can have both votes tomorrow: one with that and one without it.

Mr. Chairman: I am not sure that is the responsibility of legal counsel. What Mr. Davis has attempted to do with his motion on section 16 that is before us is something that he could easily move tomorrow in the context of whatever legal counsel comes back with. If she can come back and have the ordering clear, the various reference points and antecedents involved here, that would be what we need from her. We can then determine what motions are appropriate to be brought forward for arbitration. It would be unfair to have her now devise an arbitration scheme, which may or may not be what is in the minds of the members at this point.

I suggest that your present motion be withdrawn and we will see what happens tomorrow on this. We will deal with no more of section 5b until tomorrow. We will move on at this point, if we can.

Mr. Davis: Could I ask for a five-minute recess? I would like to go and see where my chairman is.

The committee recessed at 3:36 p.m.

3:43 p.m.

Mr. Chairman: I call the meeting back to order. We are moving on to section 6, which is on page 13 of Mr. Nigro's compendium.

Hon. Mr. Elston: We drove him out of committee, did we?

Mr. Chairman: Yes.

Mr. Ward: I have an amendment that relates to section 5.

Mr. Chairman: Would it be a new section?

Mr. Ward: Yes, I believe so.

Mr. Chairman: Why do we not deal with that first?

On section 5:

Mr. Ward: All right. I think it is a housekeeping sort of thing.

Mr. Chairman: Mr. Ward moves that section 5 of the bill be amended by adding the following subsection:

"(5) Eligible persons shall be deemed to have authorized persons submitting claims under subsections 1 or 3 to include in the claims the information mentioned in subsection 4."

Mr. Chairman: May I ask you a question? Unfortunately, I do not have this before me.

Mr. Ward: For some reason, it is on page 8.

Mr. Chairman: Page 8 of Mr. Nigro's compilation?

Mr. Ward: Yes. Something happened in the way this has been put in order. Maybe it would be easier to leave it and come back to it, because there is going to be some confusion.

Hon. Mr. Elston: Let us follow along.

Mr. Chairman: I would think it would be wiser to go on to section 6, but tomorrow morning, before we proceed with the other sections on 5b, we should do it. Would you withdraw that until tomorrow morning?

Mr. Ward: I will withdraw it until tomorrow.

Mr. Chairman: We are now moving to page 13.

Mr. Davis: Mr. Chairman, you should draw it to our attention tomorrow morning that section 5, which he wishes to introduce, is dependent on section 4 on page 7. There are a number of concerns we have.

Mr. Ward: Is it? All right, we will move to 6 next.

Clerk of the Committee: Section 5 is stood down until 5a and 5b are completed.

Mr. Davis: All right.

On section 6:

Mr. Chairman: This is page 13 of the legislative library's compendium. Subsection 6(1) reads:

"If a physician informs the minister that the proper treatment of a patient who is an eligible person requires the administration of a drug that is not a listed drug, the minister may make this act apply in respect of the supplying of that drug as if it were a listed drug by so notifying the physician."

This should all be "drug product" now, remembering that consistent change throughout. Dr. Stephenson was not here yesterday. The definition is now "drug product" rather than the word "drug." That replaces the word "drug" throughout.

Miss Stephenson: Does it also replace "listed substance"?

Mr. Chairman: No. "Listed substance" is defined and stays defined.

I have an amendment on that page from the government, but it is only for the insertion of those appropriate words. Why do I not read it into the record so that it is understood? It is in the spirit of what we have already agreed would follow.

"b(1) If a physician informs the minister that the proper treatment of a patient who is an eligible person requires the administration of a drug for which there is not a listed drug product, the minister may make this act apply in respect of the supplying of that drug as if it were a listed drug product by so notifying the physician."

Mr. Reycraft: Are you certain there is not a change in the meaning; that it is just the drug product change?

Mr. Chairman: That is how I am advised.

Mr. Reycraft: The underlined portion is different from that in the

original section. Instead of saying "drug that is not a listed drug," it says "drug for which there is not a listed drug product."

Hon. Mr. Elston: That is pretty much the same.

Mr. Chairman: I think it is just for clarification of language when using the term "drug product" rather than "drug."

The amendment I just read has to be moved by a government member. It is moved by Mr. Ward. Is there any further discussion?

3:50 p.m.

Mr. Davis: Could the minister or one of the appropriate officials please comment? I read them both and it does not mention a listed drug product there. Is that the only rationale for the change?

Mr. Chairman: Yes. We agreed with a change of definition under subsection 1(1) as I recall. We were going to use "drug product" rather than "drug" to clean up the language a little bit. For that, it requires the slightly longer introduction "for which there is not a listed drug product" rather than the easier introduction to the word "drug." Otherwise, there is no substantive difference. It is just to make it conform to the definition.

This is subsection 6(1) as amended to make it consistent with the first definition using "drug product" rather than simply the word "drug." It is the centre item on page 13. You notice this has been accepted by the OPA.

All those in favour of this motion will please indicate.

All those opposed please indicate.

Motion agreed to.

Miss Stephenson: Somewhere, there was an amendment submitted which seems to have been lost.

Mr. Chairman: One of yours, Dr. Stephenson?

Miss Stephenson: Yes.

Mr. Chairman: Yesterday there was quite a bit of confusion around them and we tried a couple of times to clarify them. Most of them seem to have been with Bill 55. Was there something for Bill 54 too?

Miss Stephenson: No. It is on the next page, page 14. There it is. That is it. It relates to placing this section in the act in the appropriate site in order that it will relate to the concept of claims for payment and benefits and other items. The motion was that this be section 6 and that the current section 6 be renumbered section 7.

Mr. Chairman: Which would you want renumbered 7; yours or the existing one?

Miss Stephenson: The amendment that is here for introduction would become section 6 of the bill, since it relates to items that have been noted in sections 2, 3, 4 and 5 of the bill. It relates to benefits under the act and the definition of those benefits.

Mr. Chairman: You would like that to be in the section we just voted on.

Miss Stephenson: If there is a more appropriate site for it, then I would be in the hands of the chairman or legal counsel.

Ms. Baldwin: I am sorry. Let me get back with you. What is your point?

Miss Stephenson: The motion ensures that no listed drug substance or listed substance may be a benefit under the act unless the manufacturer has complied with certain requirements by the minister; that none can be a benefit unless the manufacturer provides information regarding accurate selling price and sales data for the purpose of assisting the minister; and that the minister of Health shall publish a schedule of benefits from time to time, as detailed in the regulations, listing products and product size in order to ensure that these sections of the act may be operative.

Ms. Baldwin: I do not know what the question is, though.

Miss Stephenson: The question was, should it be sited in the act as section 6, replacing the current section 6, or should it be elsewhere.

Ms. Baldwin: I think it would more appropriately be towards the regulation-making authority part of it as a limitation on what drugs might be listed, or those conditions for listing of drugs.

Miss Stephenson: Then I am in the hands of the chairman; that is the only request I make.

Mr. Chairman: It makes some sense to me. We will have to make sure that it gets picked up at that point. Section 11 is the first section where we start dealing with regulations. Have you flagged that for yourself?

Ms. Baldwin: Yes, fine.

Mr. Chairman: Will you bring this to my attention before I introduce anything from section 11? Thank you.

Mr. Bernstein: On the matter of the introduction of Dr. Stephenson's motion, the government will be introducing certain motions amending section 11. For example, one deals with conditions of listing to be prescribed. It would seem that is dealing with the same subject matter in a different way. That would seem to be a logical place for the matter to arise.

Mr. Chairman: When we get to that position, people will let me know and I will recognize the changes as we normally do: government first, official opposition second, New Democratic Party third.

Mr. Davis: Did Mr. Bernstein say the government will be introducing new amendments tomorrow?

Mr. Bernstein: These have already been codified for the committee.

Mr. Chairman: These are already before us.

Hon. Mr. Elston: They have to be moved tomorrow, unless we get to them today.

Mr. Davis: I understood there were new amendments. I apologize.

Mr. Chairman: Subsection 6(2) reads:

"An operator of a pharmacy is not liable for contravening this act or the regulations in respect of supplying a drug referred to in subsection 1 unless the operator has received notice from the physician referred to in subsection 1 or from the minister that this act applies to that supplying."

There is a government amendment to that, which Mr. Ward will read for us.

Mr. Ward: I have to admit to some confusion in terms of how that differs from number 2.

I move that subsection 6(2) of the bill be amended by inserting after "notice" in the fourth line, "from the physician or from the minister." I take it there should be a deletion in there as well.

Hon. Mr. Elston: In the fourth line, you would have to take out "from the physician" and insert in its place, "from the physician or from the minister."

Mr. Ward: Yes, to clear up the wording.

Mr. Chairman: Would you read the reworded section?

Mr. Ward: "An operator of a pharmacy is not liable for contravening this act or the regulations in respect of supplying a drug referred to in subsection 1 unless the operator has received notice from the physician or from the minister that this act applies to that supplying." It is to clear up the wording.

Mr. Chairman: Just so that I understand this, does the motion end with the phrase "unless the operator has received notice from the physician or from the minister"?

Mr. Ward: I do not think it ends there. It reads "that this act applies to that supplying."

Mr. Chairman: I will read out what the motion now reads.

"An operator of a pharmacy is not liable for contravening this act or the regulations in respect of supplying a drug referred to in subsection 1 unless the operator has received notice from the physician or from the minister that this act applies to that supplying."

What is the purpose of this?

4 p.m.

Hon. Mr. Elston: For clarity. It holds the pharmacist free from any liability for having made charges for what becomes a special authorization. This is the special authorization program. We want to make sure that the pharmacist is not caught if he or she has not been advised that this is a prescription which would be part of the Ontario drug benefit plan. When they get notification from a physician or from the minister, then they become part of this act. Under this section, they would not be contravening the act.

Mr. Chairman: Any further discussion?

Interjection.

Mr. Chairman: These are the special authorization (inaudible) that we heard before. The language is a little different for the purpose of clarity, but it obfuscated me totally. Is there a need for further comment? No. All right.

Miss Stephenson: I was always under the impression that you were to write legislation in the positive framework, not in the minor mode but in the major mode. You do not say, "Is not liable unless...." Why do you not say, "Is liable"?

Mr. Chairman: Why was the negative used rather than the positive?

Hon. Mr. Elston: But they are not liable under circumstances of notification.

Miss Stephenson: Why do you not say, "Is liable only when he has not received that authorization"?

Mr. Chairman: Miss Stephenson puts her finger on an interesting notion that this is usually how legislation is written.

Miss Stephenson: It is a little difficult to understand that you are "not liable unless...." That is not the usual phraseology in English unless you want to become semantically exotic.

Mr. Chairman: It is a point that is well made. The use of double negatives and that sort of thing is something that legislation usually tries to avoid. We have enough trouble interpreting it as it is without that. Would somebody like to suggest this in the positive?

Hon. Mr. Elston: May I suggest it? "An operator of a pharmacy is liable for contravening this act when he or she has received notice from a physician or from the minister that this act applies to that supplying." It is still a little bit backwards.

Mr. Bernstein: It has to be remembered that subsection 6(2) comes after the section that talks about liability; so the liability is already provided for. This is really an exception to the liability and says it is not liable in those exceptional circumstances. Further on in that clause is the exception to the exception.

Mr. Chairman: Since we do understand the meaning of this, is there further debate?

All those in favour please indicate.

All those opposed.

Six to four.

Motion agreed to.

Mr. Davis: Mr. Chairman, I want to make a clarification. I think there was----

Mr. Chairman: There will be lots of other opportunities, in every sense.

I have no other items on section 6.

Mr. Davis: No other items?

Mr. Chairman: Those are all now being put over for section 11. Those were the ones Dr. Stephenson was referring to.

Miss Stephenson: After section 10.

Mr. Chairman: All those in favour of section 6, as amended, please indicate.

Those opposed.

It is hard to interpret this, but I guess it was carried six to four. It is just that the hands have to go up. Yours did, Cam; I saw yours. I had only five to one on it, and I knew there were more people out there.

Section 6, as amended, agreed to.

On section 7:

Mr. Chairman: Subsection 7(1): "The minister may make an agreement with a supplier of a listed substance, providing for payment of a specified amount for supplying the listed substance to an eligible person under the direction of a physician."

Do you want me to do subsection 2 as well, or shall we just start off with subsection 1?

Mr. Davis: It would be easier to deal with subsection 1.

Mr. Chairman: Is this understood? I presume this is for items such as oxygen, I presume.

Hon. Mr. Elston: That is right.

Mr. Chairman: Any discussion?

All those in favour of subsection 7(1) please indicate. Carried.

Subsection 7(2): "Except as the agreement authorizes, the supplier shall not charge, or accept payment from, any person other than the minister for supplying the listed substance to an eligible person under the direction of a physician."

This is merely a perpetuation of present policy.

Any discussion?

All those in favour of subsection 7(2) please indicate. Carried.

Mr. Chairman: There is a motion from the government for a new subsection 7(3).

Mr. Ward moves that section 7 of the bill be amended by adding the following subsection:

"(3) Subsection 2 does not apply to a supplier of a listed substance who supplies the listed substance to an eligible person without knowing or having reasonable grounds to believe that the person is an eligible person."

Mr. Ward: That is to address the concern that deputants brought with regard to a reasonable mistake.

Mr. Chairman: One will remember the not countless deputants who had that concern before us.

Is there any discussion of subsection 7(3)?

All those in favour please indicate.

Those opposed.

Motion agreed to.

Section 7, as amended, agreed to.

On section 8:

Mr. Chairman: Section 8: "No operator of pharmacy shall refuse to supply a listed drug for an eligible person in order to avoid the operation of a provision of this act."

We again will replace "drug" with "drug product," as has been agreed.

Clerk of the Committee: Can someone move the amendment?

Mr. Chairman: We do not need it. That has been agreed to in general.

There is a motion from the official opposition.

Mr. Leluk moves that section 8 be amended by adding the following after "of this act": "but this shall not operate to preclude the exercise of professional judgement as a reason for refusing to supply a listed drug."

Mr. Leluk: Would that be "listed drug product" again?

Mr. Chairman: Yes. That is understood.

Is the subsection understood, "but this shall not operate to preclude the exercise of professional judgement as a reason for refusing to supply a listed drug"?

Mr. Leluk, do you wish to speak to that?

Mr. Leluk: No. I do not think so. It is self-explanatory.

Mr. Chairman: Mr. Reycraft, you had a question?

Mr. Reycraft: No. I was just indicating that we needed a couple of minutes.

Mr. Chairman: Fine.

Mr. D. S. Cooke: Since we have a parallel motion, exactly the same, we will be supporting the amendment.

Miss Stephenson: The question is, which of the amendments makes it clearer?

Mr. Chairman: Mr. Cooke is essentially saying that if this carries, he will not bother with his.

Ms. Baldwin: Maybe we should ask the ministry officials to comment on their reaction to that.

Mr. Chairman: Is there a comment from the ministry on this?

Hon. Mr. Elston: That is what we are discussing here. Perhaps we can have a moment?

Mr. Chairman: Mr. Cooke, do you wish to make any further comments on whether you would prefer your amendment to this one?

Mr. D. S. Cooke: The only thing mine does that the official opposition's amendment does not is it refers to "operator," so we are clear that it is a pharmacist who can exercise the professional judgement. I am not an expert in this type of thing, so I am not sure which one is clearer. They both mean exactly the same thing to me as a lay person.

4:10 p.m.

Hon. Mr. Elston: On reflection with the ministry, there is probably a clearer version in the New Democratic Party's suggested amendment. Having been asked for an opinion, that is the opinion that we, the ministry group, have been able to come up with here.

Mr. Chairman: Should we not move his and just move ours?

Mr. D. S. Cooke: I do not care who moves it.

Mr. Chairman: It does not really matter to me how you like to proceed. The intent is clearly the same.

Miss Stephenson: As I see it, the difficulty with ours is that the word "operator" is used and then the word "operate" is used, and that is not good. We will be happy to move Mr. Cooke's amendment, because the two amendments are exactly the same.

Mr. Leluk: I will withdraw my amendment.

Mr. Chairman: Mr. Leluk replaces his amendment with that previously presented by Mr. Cooke but never read in, which will now be read into the record. First, Mr. Leluk removes--why do we not do it the other way? It is probably better. You withdraw yours.

Mr. Leluk: I withdraw my amendment.

Mr. Chairman: Mr. Leluk moves that section 8 be amended by adding the following after "of this act": "but an operator may refuse to supply a listed drug for an eligible person if the proper exercise of professional judgement so requires."

Any further discussion on this? I think there is a general understanding.

Motion agreed to.

Mr. Chairman: Shall section 8, as amended, carry?

Mr. Ward: It has already been carried.

Mr. Chairman: No. This was an amendment to the one we had not carried as yet. Before we get into any subsections, does section 8, as has now been amended, carry?

Section 8, as amended, agreed to.

Mr. Chairman: Subsection 8a(1) reads, "An operator of a pharmacy may notify the minister that the operator elects not to accept payment from the minister under section 5." The opting-out provisions follow.

Miss Stephenson: I fail to see the necessity for this amendment when we heard from every pharmacist who appeared before us that opting out was not a viable alternative for pharmacists in Ontario. I wonder, therefore, why we should even be considering such an amendment to the act.

Mr. D. S. Cooke: I concur with Dr. Stephenson. Originally, a proposition was put to us by the OPA that there was a requirement for opting out. Then when its representatives appeared before the committee, they made it very clear it was not a viable alternative to them. All along, we have opposed the idea that someone would be able to opt out of this program. I therefore concur with Dr. Stephenson that this is not necessary.

Hon. Mr. Elston: I have a problem with that. We do now have one pharmacist who has decided not to participate in our program. If we did not have a section such as this, he would not be able to be outside the program. He does not want to be in the program; he does not participate in the Ontario drug benefit plan. He is doing very well in his own market.

Miss Stephenson: He is at the airport.

Hon. Mr. Elston: That is true, but he does not wish to participate. We have to have this mechanism to avail him of the opportunity to not participate.

Mr. Chairman: Will the minister complete his remarks? I have a list now.

Mr. Ward: It is my understanding the legislation says a pharmacist has to supply eligible people. Technically, somebody such as that one example is operating in violation of the legislation unless there is something in there that says if he elects not to--

Mr. Jackson: Not if they want to participate in the plan.

Mr. Ward: --he does not have to supply eligible people under subsection 2(2). You have to have this in here, regardless.

Miss Stephenson: The chances of him having ever to supply eligible people is practically nil; it probably is nil.

Mr. Laughren: Correct me if I am wrong, but what happens if there is one pharmacist in a remote community who decides to invoke this section of the act? What happens then?

Dr. Psutka: Freedom of choice.

Mr. Laughren: For whom?

Dr. Psutka: For him.

Mr. Laughren: What about the patients or the customers?

Mr. Chairman: I am not clear to whom the questions are going and who is replying. Dr. Psutka, were you making a response?

Dr. Psutka: I should not have been. I apologize.

Mr. Chairman: Why do you not pose the question again, Mr. Laughren, and I can make sure you are getting picked up on mike.

Mr. Laughren: I am wondering what happens when a pharmacist in a remote community decides to invoke this section of the act. What happens to that pharmacist's customers?

Hon. Mr. Elston: First, we do not have that situation to deal with at this time, but there are situations now where supplies of prescription drugs are being delivered through the mail, for instance; they can be delivered that way. There are any number of possibilities that might be conceived,

We have to be very sure that the person who is not participating now is given the opportunity not to participate and to continue not to participate in our program. If we do not have this mechanism he is in violation and I do not think that is appropriate.

Mr. Laughren: I know the minister is wishy-washy on the opting-out question. I will bet Dr. Stephenson is not wishy-washy at all on the opting-out question.

Mr. Davis: Without this, is the minister saying he could not make an exception? Since the only person who has opted out--correct me if I am wrong--is the pharmacist who is at the airport, the chances of him throwing the Ontario drug benefit--

Hon. Mr. Elston: He could fill a drug benefit prescription for anyone who was at the airport.

Mr. Davis: But you said he has opted out.

Hon. Mr. Elston: Yes, but if we had a provision that prevented him from doing that, he would be in violation of the act if anyone came in at the airport and said he was on the Ontario drug benefit plan and that type of thing. He has decided he will not participate in the ODB plan.

For Mr. Laughren's benefit, another item that was brought to my attention was that in remote communities in northern Ontario we do have dispensing physicians, even now.

Mr. Chairman: So he could opt out too.

Mr. D. S. Cooke: At one point I thought that you were convinced. When the OPA came in front of us, you agreed and you are on record as agreeing that if we did not want this provision you were not going to put it in the bill.

Hon. Mr. Elston: I was reminded that if we did not have the ability of this section to allow the person at the airport to be out of the program, we would have a violation. For several years we have had a person who decided not to participate under the terms of the participation agreement.

Mr. Davis: How does he opt out now?

Hon. Mr. Elston: He is not a member of the agreement. There is a participation agreement which he is not party to.

Mr. Davis: If this is not in it, then the participation agreement disappears.

Hon. Mr. Elston: That is right. This will replace the participation agreement. This becomes all-inclusive. Every pharmacist will become a participant if there is no way of electing not to be part of the program.

Mr. Davis: What would happen if all the pharmacists decided to opt out?

Hon. Mr. Elston: They would not be participating under the Ontario drug benefit plan, and we might have to take a look at what other means were there. I just do not see that happening. I think physicians would take up the slack.

Miss Stephenson: My concern was how many applications for payment for drug benefits does the minister get from the airport pharmacy.

Hon. Mr. Elston: None. He does not participate. He has decided not to participate.

Miss Stephenson: If it is absolutely necessary to have this in here to allow him to function as a pharmacist--I have grave doubts that is so, but if you believe that is necessary--then we just leave it in.

Mr. Davis: You have convinced me.

Mr. Laughren: I am provoked to ask the question that could not be asked, to pose the unthinkable.

Mr. Davis: That is not like you at all.

4:20 p.m.

Mr. Chairman: We have been waiting for this for weeks.

Mr. Jackson: Why can you not save that for question period?

Mr. Laughren: Can the minister tell me what would happen if there was a dispute over the fees as determined by him? What may flow from this bill eventually is that the dispute may be resolved only through him. What happens

if there is a serious dispute and the pharmacists collectively say: "Put it all in your ear. We are opting out of the Ontario drug benefit plan." What would you do?

Hon. Mr. Elston: That is hypothetical and of course, it is not going to take place.

Mr. Laughren: Of course, it is hypothetical. That is why I hesitated to ask the question. I do not think you can live in a world that does not deal with the hypothetical question. It may be hypothetical, but it is also possible.

Mr. Jackson: I submit that the minister of Health is learning how to have thick skin and big ears.

Mr. Ward: I do not know whether this helps at all, but in referring back to subsection 4(1), it says, "No operator of a pharmacy shall charge, or accept payment from, a person other than the minister in respect of supplying a listed drug for an eligible person...." This permits them to accept payment for an eligible person in that one instance.

Hon. Mr. Elston: This gives the person the right to be completely up front.

Mr. Ward: That is the whole point.

Miss Stephenson: The facts are that Ontario drug benefit plan beneficiaries who are going to be flying on an airplane always make sure that they have their medications filled from their usual pharmacists before they ever go to the airport.

Mr. Ward: Always?

Miss Stephenson: Believe me.

Mr. Chairman: We understand the discussion. Are you ready for the vote?

Subsection 8a(1) agreed to.

Mr. Chairman: On subsection 8a(2):

"Beginning 90 days after the day the minister receives the notice under subsection (1), the operator is not entitled to payment from the minister under section 5 and is not required to supply listed drugs for eligible persons under section 8." That is understood. It follows from subsection 8a(1). Any further discussion?

Subsection 8a(2) agreed to.

Section 8a agreed to.

Mr. Ward: I have just a minor point. The way this was put together, those were not actually part of the bill. I move the amendment adding those sections. I just realized that it was shown as being part of the bill. They were not part of the bill. If you need a formal motion, I will make one.

Mr. Chairman: The wording has been passed. I am not really concerned about it unless the clerk is.

Hon. Mr. Elston: It was in the original bill.

Mr. Chairman: Both things that have just been passed, subsection 8a(1) and 8a(2), were moved by Mr. Ward. You can thank him for that. Is section 8b in the act?

Clerk of the Committee: No, it is not. This is a new section.

Mr. Ward: Mr. Reycraft advises me that the bills that we have do not include the things that were brought in--

Mr. Reycraft: The things from before the hearing started.

Mr. Chairman: The items in the left-hand column that Mr. Nigro has compiled for us were all things which were brought in January for us, as far as I know. Therefore, I initially said that was what I considered to be the act from which we are working at this stage, except ministerial amendments prior to the hearing process.

On section 8b:

Mr. Chairman: "The minister may consult with persons or organizations--"

Clerk of the Committee: This also is new. It should be amended by Mr. Ward; it is an amendment.

Mr. Chairman: I am not clear. Was this part of the January piece?

Clerk of the Committee: No. It was not. This is a new amendment.

Mr. Chairman: If these were part of what was in--

Mr. Ward: --the opening statement amendments.

Mr. Chairman: I have been including these as part of the bill as we proceed along and not requiring them to be moved by anybody. We will continue to do that.

Clerk of the Committee: The bill does not contain it. It contains an amendment, so he has to move the amendment into the bill.

Mr. Chairman: We have a slight problem. The clerk was not here yesterday and some other members were not. When I started off, I said we would use as our working document, not the bill from the House, but rather the motions in the bill as it was amended and presented to us prior to the public hearing process in January.

To make sure everything was passed, I would read into the record the section we were dealing with. That motion then would be voted upon in that way. Anything new that has come in since is moved by an individual member. If you wish to go back to the other process, we can go back to the beginning of the bill and do it all again. That is how we have been operating and I prefer to maintain that approach.

Mr. Ward: I want to point out that even though that is the way you may have thought we have been operating, we have been moving all of those things that came in January.

Mr. Chairman: Except for the long list we got yesterday, I worked only from Mr. Nigro's document. I cannot explain what the others of you have been doing, but that is what I have been working from, as I said I would.

Therefore I am working from this and am considering it moved. I understood you all did as well. If not, then we can revert to the old style, but I thought we would lose fewer amendments if I did it this way.

Hon. Mr. Elston: We are all moved.

Clerk of the Committee: You go ahead. I will put Mr. Ward's name on it.

Mr. Chairman: You put Mr. Ward's name on all these.

"The minister may consult with persons or other organizations representing eligible persons, manufacturers of listed drugs, operators of pharmacies, physicians and suppliers of listed substances with respect to the amounts payable by the minister and other matters of mutual concern arising out of this act and the regulations."

Do you wish to speak to this, Mr. Ward?

Mr. Ward: I would not dare.

Mr. Chairman: Good. Are there any comments? If not, we will take the vote on this.

All those in favour of section 8b, please indicate.

Motion agreed to.

Section 8b agreed to,

Section 8 agreed to.

Mr. Chairman: Subsection 9(1) reads: "The minister may appoint inspectors for the purposes of this section."

I presume there is no discussion on that portion.

Mr. Jackson: I want to make an inquiry. The colleges made a recommended amendment.

Mr. Chairman: It was not necessarily an amendment to subsection 9(1). Looking at it, I would think it would more properly come into one of the other subsections. It is a general amendment to section 9. This subsection is just concerned with the capacity to appoint inspectors.

All those in favour, please indicate.

Carried.

Subsection 9(1) agreed to.

Miss Stephenson: Could we have section 134 of the Health Disciplines Act outlined to determine whether it would be more appropriate to put the provision respecting confidentiality immediately following subsection 9(1) so that it would apply to all inspectors?

Mr. Chairman: Mr. Bernstein, do you happen to have the act with you?

Mr. Bernstein: Do you want me to read it?

Mr. Chairman: Is it very long?

Mr. Bernstein: I will read fast. Subsection 134(1) reads:

"Every person employed in the administration of this part, including any person making an inquiry or investigation under section 133, shall preserve secrecy with respect to all matters that come to his knowledge in the course of his duties, employment, inquiry or investigation and shall not communicate any such matters to any other person except,

"(a) as may be required in connection with the administration of this part and the regulations and bylaws or any proceedings under this part of the regulations;

"(b) as may be required for the enforcement of the Health Insurance Act;

"(c) to his counsel; or

"(d) with the consent of the person to whom the information relates."

Miss Stephenson: Could you not say in subsection 9(1) that all the provisions in clauses 134(1)(a), (b), (c), and (d) of the Health Disciplines Act apply in the circumstances? Do you have to outline them?

4:30 p.m.

Hon. Mr. Elston: If I may, you cannot use it, because these inspectors do not have anything to do with the Ontario health insurance plan. For instance, our inspectors are currently bound by an oath of secrecy. They are members of the public service, obviously. As well, they all happen to be pharmacists, so they have an obligation to act in a professional manner, as a result of their professional attitude.

I think there is effective secrecy and confidentiality built into the situation now with the inspectors we have employed under the participation agreement.

Miss Stephenson: That is an interesting conjecture on your part. If it is so, why would the Ontario College of Pharmacists, which understands that confidentiality, propose that the inspectors in this section require the same kind of definition in terms of confidentiality as is required under the Health Disciplines Act?

Hon. Mr. Elston: It may be because the college was not aware of the nature of the oath taken by the public servant. I do not know. It is quite clear section 134 cannot apply mutatis mutandis to this legislation.

Mr. Chairman: I would rule that we could not substitute section 134 of the Health Disciplines Act because of its wording, which refers to other parts of the Health Disciplines Act and to the Health Insurance Act. We would have to come up with our own wording of it.

Hon. Mr. Elston: Basically there are oaths that require confidentiality in any event. It may not have been understood that there were

those requirements for people who come into the employ of the ministry as inspectors. The college is probably making the suggestion that there be some sort of confidentiality. We feel it is already there; in fact, it is working under our current system.

Miss Stephenson: My concern is that at the moment, it is my understanding there is a strong movement afoot to remove from Ontario public servants that requirement for confidentiality. It is certainly one of the aims of the Ontario Public Service Employees Union, which says that is not a burden civil servants should have to bear.

Mr. Laughren: That is not fair.

Miss Stephenson: I am not being unfair. I am presenting a contention.

Mr. Chairman: As a point of order for you to operate on, we are getting an opinion on whether it is required and on whether the order would not be an order to lift it. However, it would be in order to place a requirement of confidentiality of some sort within this act, because there is nothing in the definition of an inspector that necessarily requires him to be a civil servant or a pharmacist. Even though it is the fact today, the double protection the minister is discussing is not required by this legislation. Therefore, it would be in order to have something of that kind. You could not put in section 134 of the Health Disciplines Act as it exists at the moment, but something similar could be developed.

Miss Stephenson: Could we stand this down until we have an opportunity to see whether something could be developed?

Mr. Chairman: If you like, what we can do is determine that we will not take the final vote on section 9 until you have had a chance to make this presentation. I hope we can do that tomorrow. We can proceed with the rest of section 9 now.

Hon. Mr. Elston: May I make a point on the question of confidentiality? Mr. Bernstein and I were conferring for a moment. You would want an inspector to have the ability to inform other parties if there were a finding that the college ought to be involved--a report to the college, for instance--or if there were a report to be made to law enforcement authorities.

Miss Stephenson: That is something that needs to be written into the confidentiality section. What is necessary here and what I am sure the college is concerned about is the proscription upon releasing that information generally or to anyone other than those who should be so apprised after the inspection has taken place. Surely, that has been written before.

Mr. Chairman: It would be interesting to see a proposed amendment along those lines tomorrow if that is possible, perhaps after conversation with the college or whomever. That does not preclude us from looking at some of the other aspects of the inspectors' work. Why do we not decide that we will not finish section 9 today, but let us leave it open for a final vote after we have had a chance to look at the question of confidentiality and to make some decisions about that?

The amendment to subsection 9(2) reads as follows:

"(2) An inspector may examine any records, in whatever form, in the possession or under the control of an operator of a pharmacy or a physician,

if the inspector believes on reasonable grounds that the records will assist the inspector in determining the accuracy and completeness of a claim for payment of the operator or physician or of information they are required to submit under this act or the regulations, or in determining whether they have complied with this act and the regulations."

Miss Stephenson: That is our amendment.

Mr. Leluk: You must have liked our amendment and adopted it. Is that correct?

Mr. Chairman: All I can suggest to you is that it was greatly loved by all and, therefore, we will probably pass it with all due dispatch.

Mr. D. S. Cooke: We have a further amendment, but we want to ask a question of legal counsel. Our amendment deals with the inspection of manufacturers. The Conservatives have an amendment to subsections 10(4) and (5) regarding manufacturer inspectors. I want to make sure the amendments on subsections 10(4) and (5) cover our amendment on subsection 9(2). If so, then there is no need for me to move it. From reading both I assume they do, but I want legislative counsel to respond.

Ms. Baldwin: Let me catch up with you here.

Mr. D. S. Cooke: Actually, I think the official opposition amendment probably goes further by also talking about wholesalers.

Mr. Chairman: Yes.

Mr. D. S. Cooke: There is no problem with the amendment on subsections 10(4) and (5). Is that correct?

Mr. Chairman: The question essentially is whether the proposed New Democratic Party amendment to subsection 9(2) would be redundant, should the official opposition amendment on subsections 10(4) and (5) carry. Do they both have the same effect, with slightly larger parameters given to what the Conservative motion covers?

Ms. Baldwin: There are a lot of paragraphs to read at once in several different places. Give me a moment.

Mr. Chairman: Certainly. Is there any discussion on the whole question of the examination of records in the motion that has been brought before us at this time?

Interjection.

Mr. Chairman: We are past subsection 9(1). We are now doing subsection 9(2). The question for legal counsel is whether Mr. Cooke should move his amendment at this stage or whether he should allow that to be covered under the Conservative amendment for subsections 10(4) and (5).

Mr. Bernstein: I am sorry, Mr. Chairman, I am trying to find Mr. Cooke's amendment.

Mr. Chairman: It is on page 18. It would add in the third line "a manufacturer of a listed drug."

Ms. Baldwin: Let us assume for the moment that all the rest of the words in the Progressive Conservative motion correspond with those in the government motion, as it appears they do. The Progressive Conservative motion includes a wholesaler; that is one difference. Other than that, it does not seem to be different. It might be just as simple to put it into the government tning instead of repeating another whole subsection.

4:40 p.m.

Miss Stephenson: Subsection 10(5) deals with the marketing record; it does not include information regarding the manufacturing process. That was the concern we had about including "manufacturer" in the original: all documents might be included in the original motion, which relates to pharmacists.

Our concern was that for manufacturers and wholesalers, the records needed for the purposes of this act had to do with everything related to the marketing and selling of the drug. The inspector does not need to have the information about the manufacturing process or the production of the manufacturer or wholesaler for this act.

Mr. Chairman: Let us go back to legal counsel.

Ms. Baldwin: Subsection 10(5) in your motion seems to respond to subsection 9(3) in the act. I think that will be covered when we get to subsection 9(3), dealing with the issue of copies.

Miss Stephenson: It limits the areas to be inspected or taken away for information.

Mr. Chairman: The question still remains. You have indicated that, without thinking about subsection 10(5), 10(4) is practically the same as Mr. Cooke's motion except for the wholesale component, and therefore, you said it might as well be done in this section. Might it as easily be left to section 10?

Ms. Baldwin: Yes, as long as we make sure the wording is subject to what other people say; as long as the wording is parallel. The committee is to decide whether it wants to include manufacturers and whether it wants to include wholesalers. If it does, it might well be easier for the reader to put it all together in that one subsection.

Miss Stephenson: Except that there is a difference in the intent for the manufacturers and wholesalers. They must be subjected to inspection. However, it is not as free ranging an inspection as it could be within the pharmacy or physician's office.

Ms. Baldwin: Dr. Stephenson has answered Mr. Cooke's question.

Miss Stephenson: That is why we attempted to make them absolutely parallel but with the proviso that they apply to specific records.

Mr. Chairman: Mr. Cooke, what is your desire?

Mr. D. S. Cooke: The wording is parallel, so we will go with subsection 10(4).

Mr. Chairman: The motion of Mr. Cooke that is on the list is

withdrawn. We are currently dealing with subsection 9(2). Is there any further discussion?

All those in favour of 9(2) please indicate.

Motion agreed to.

On subsection 9(3):

Mr. Chairman: Subsection 3 reads as follows:

"A person carrying out an inspection may, upon giving a receipt therefor, take away a record for the purpose of making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible."

There is a government amendment.

Mr. Ward: It replaces "therefor" with "for it." It is editing only.

Interjection.

Mr. Ward: And "inspector." I am sorry. I will re-read it. "An inspector may, upon giving a receipt for it," and then it continues.

Mr. Chairman: Mr. Ward moves that subsection 9(3) of the bill be struck out and the following substituted therefor:

"(3) An inspector may, upon giving a receipt for it, take away a record for the purpose of making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible."

Is there any discussion of the amendment?

Miss Stephenson: We have an amendment to that.

Mr. Chairman: I know; I understand that.

Mr. Leluk: We have an amendment which provides for a specific time for the return of the records that are taken.

Mr. Chairman: You want to move that his amendment be replaced by yours.

Mr. Leluk: Yes. It reads, "A person carrying out an inspection under--

Miss Stephenson: I think we should accept the government's amendment related to, "An inspector may, upon giving a receipt for it."

Mr. Leluk: Okay.

Mr. Chairman: Can I have this again, please?

Miss Stephenson: Our amendment would simply be, "An inspector may, upon giving a receipt for it."

Mr. Leluk: It shall be returned within 24 hours.

Mr. Chairman: You are referring to taking away records to make a copy.

Miss Stephenson: The record shall be returned within 24 hours.

Mr. Ward: I do not think you want to amend this amendment; you want to amend the main motion.

Mr. Chairman: That is right.

Miss Stephenson: Fine.

Mr. Leluk: We want to ensure these records are not being kept out of the pharmacies or the dispensing physicians' offices for any length of time.

Mr. Chairman: To get some order on this, Mr. Ward is correct. We should probably deal with his amendment first and then go back and do yours because yours deals with the main motion.

Mr. Ward amends the subsection by replacing the first words, "A person carrying out an inspection may" with the words, "An inspector may, upon giving a receipt for it, take away a record," etc. Is there any further discussion on Mr. Ward's motion?

Motion agreed to.

Mr. Chairman: There is a motion by Mr. Leluk to amend the subsection as amended.

Mr. Leluk: As I indicated earlier, I would like to amend it by substituting the words "returned within 24 hours" for the words "returned as promptly as reasonably possible."

Mr. Chairman: "As promptly as reasonably possible" to be replaced by "within 24 hours." Is there any discussion?

Mr. Leluk: We feel there should be a specific period given for the return of records that are taken, because some of them would be required by pharmacists and dispensing physicians to conduct their businesses.

Hon. Mr. Elston: What happens now is that they get the records back as quickly as possible. The 24 hours may be impossible if the work is done late on a weekend, for instance. I bring that to your attention. There will probably be more returns of the inspectors. That is the only thing that might occur.

Mr. Leluk: Records could be photocopied in a very short time. I have been involved in inspection work. Their records could be seized. It depends on how one defines reasonable. What is a reasonable length of time? It is imperative to pharmacists. They need prescription records to conduct their day-to-day practices, as do dispensing physicians. It is not unreasonable to ask that records removed from the premises be returned within a 24-hour period.

Mr. Chairman: Mr. Cooke.

Mr. D. S. Cooke: I did not have my hand up.

Mr. Chairman: I thought you did. You must have been doing something else with it.

Miss Stephenson: I doubt there is any place in Ontario, even a remote village, that does not have a copying machine somewhere which could be used by the inspector within a few moments of removing the records so they could be returned to pharmacists.

Mr. Chairman: If it is like mine, it does not work. That is the only problem.

Miss Stephenson: Libraries have them; post offices have them; all kinds of places have them.

Mr. D. S. Cooke: I have a question. Maybe Mr. Leluk could answer this. If the college is inspecting and takes any records, does it have a provision to return the information within 24 hours?

Mr. Leluk: I do not believe it does at the moment, with respect to specific time periods.

Mr. D. S. Cooke: Has it been a problem?

Mr. Leluk: Yes, I would say it has.

Mr. D. S. Cooke: We did not hear it from a large number at the hearings. This was not a major issue. It seems 24 hours is incredibly arbitrary.

Mr. Chairman: One at a time, please.

Mr. Davis: Just as Mr. Cooke consults with his colleagues, we consult with ours from the various groups. That was one of the concerns they had. We brought it forth.

Mr. Chairman: I appreciate that, Mr. Davis. Is there anything further? I take it the debate is understood.

Miss Stephenson: There is no doubt that 10 years ago one would have had to say "as promptly as reasonably possible," because the facilities for making copies were not so readily available. In this day and age, when they can be made instantly almost anywhere, I have difficulty suggesting we could not impose a time frame which would ensure that the pharmacists have the information they need to carry on their business at hand.

Mr. Chairman: I think there is an understanding on this. Why do we not vote on it?

motion negatived.

Mr. Chairman: We shall go back to the subsection as amended.

Subsection 9(3), as amended, agreed to.

4:50 p.m.

On subsection 9(4):

Mr. Chairman: "An inspector may at any reasonable time, on producing proper identification, enter business premises where the inspector believes a record referred to in subsection 2 may be located for the purpose of an inspection."

Mr. Leluk: We have an amendment.

Mr. Chairman: Mr. Leluk moves that subsection 9(4) be renumbered subsection 9(6) and that the following new subsections be inserted:

"9(4) An inspector may examine records, in whatever form, in the possession or under the control of a wholesaler or manufacturer, if the inspector believes on reasonable grounds that the records will assist the inspector in determining the accuracy and completeness of a claim for payment of an operator of a pharmacy or a physician or in determining whether the wholesaler or manufacturer has complied with this act and the regulations."

"9(5) A person carrying out an inspection under subsection 10(4) may, upon giving a receipt therefor, take away a sales and/or marketing record for the purpose of making a copy, but the copy shall be made and the record shall be returned within 24 hours."

Miss Stephenson: To make it consistent, I suggest we amend that last phrase to "as promptly as reasonably possible."

Mr. Chairman: Are we numbering these 9(4) and 9(5) now? Do you wish to speak to those motions?

Mr. Leluk: It provides the inspector the right to examine the records of manufacturers and wholesalers on a similar basis to the right to examine the records of an operator of a pharmacy or a physician under subsection 9(2).

Hon. Mr. Elston: We would not want to replace the current subsection 9(4), because it speaks to the times when the inspector can be in.

Miss Stephenson: It is not replacing it. It is becoming subsection 9(6).

Hon. Mr. Elston: We have a motion on the floor to accept the current subsection 9(4) and all the stuff that has been read into the record is not being considered.

Mr. Chairman: I want to be clear on it.

Hon. Mr. Elston: I thought they were going to replace it. That is what I heard. I stand to be corrected.

Mr. Chairman: That is what I want to be clear on. I was asking for discussion on subsection 9(4). I was told there was an amendment. You are suggesting two new subsections.

Mr. Leluk: That is right.

Mr. Chairman: Let us deal with subsection 9(4) and then I will accept the two amendments as read, just to speed things up after we deal with subsection 9(4).

Subsection 9(4) is the question of the inspector, at a reasonable time, producing identification and going into a business if he believes the information he requires is there. Is there any discussion on that?

Subsection 9(4) agreed to.

Miss Stephenson: The motion is that subsection 9(4), which you just passed, become subsection 9(6) and that subsections 9(4) and 9(5) as read by Mr. Leluk precede that.

Mr. Chairman: I am sorry. Let us pass these as separate sections and then we will renumber.

Ms. Baldwin: That is what I was going to ask. Can we deal with two issues here? One is the substance of them and the other is where they go. If they are passed, I would like to speak to the issue of where they should go in this section.

Mr. Chairman: Let us deal with that, because these are essentially additional subsections. The first new subsection moved by Mr. Leluk is:

"An inspector may examine records, in whatever form, in the possession or under the control of a wholesaler or manufacturer, if the inspector believes on reasonable grounds that the records will assist the inspector in determining the accuracy and completeness of a claim for payment of an operator of a pharmacy or a physician or in determining whether the wholesaler or manufacturer has complied with this act and the regulations."

We have previously had discussion of this. Is there any further discussion of this new proposed subsection?

Miss Stephenson: No.

Hon. Mr. Elston: I would speak to the question of "manufacturer." "Wholesaler" may not be the same problem. Because this is an Ontario statute, I believe "manufacturer" means we will be limited to inspecting the records of manufacturers located here. We can probably try to have our inspectors go into other jurisdictions, but the inspectors would not necessarily be allowed into those places if people decided they did not want to comply. My concern is that the provision as written is, at the beginning, by its very nature not enforceable, except with respect to those people who are located in Ontario. I raise that as a consideration and a concern.

Mr. Chairman: Is that a friendly amendment?

Hon. Mr. Elston: No. I am just saying people will have to understand that whatever is in this section would not apply to all the wholesalers and manufacturers, but to only those people who are in Ontario.

Miss Stephenson: Probably about 90 per cent of them.

Hon. Mr. Elston: No. We have a lot of generic offices here.

Miss Stephenson: There are 43 companies here.

Mr. Chairman: You can have one of two things. You understand that is the case and you understand that is the limitation of it, or you can specifically amend this to reflect the understanding that this is the case.

Miss Stephenson: It is not outside the realm of possibility that for the purposes of this act, if a company wishes to be considered as a company manufacturing drug products that can be used under this act, it would have to agree to that kind of inspection. I do not believe that is beyond the imagination of the minister or the deputy.

Mr. D. S. Cooke: There will be an amendment coming up at some point that does refer to drugs being listed and as a condition of being listed, the manufacturers agree to this section.

Mr. Chairman: Is there anything further? All those in favour of the new subsection, which I am at this point referring to as subsection 5, please indicate. Those opposed?

Motion agreed to.

Mr. Chairman: The second motion by Mr. Leluk reads:

"A person carrying out an inspection under subsection 9(5) may, upon giving a receipt therefor, take away a sales and/or marketing record for the purpose or making a copy, but the copy shall be made and the record shall be returned as promptly as reasonably possible."

Ms. Baldwin: May I make a comment here? I would like to suggest to the committee that for the better reading of the bill, the motion that was just passed should come right after subsection 2. For the purposes of discussion, I will call it clause 2a. At that point we could take subsection 3 and simply say: "A person carrying out an inspection under subsection 2 or clause 2a." Then we do not have to have a new subsection. If that subsection can be reopened just for that purpose, we will have a simpler bill.

Miss Stephenson: The difficulty again is the limitation upon the wholesaler or the manufacturer records to be inspected. This provision has to do only with marketing or sales records. Therefore, it is necessary to have a separation of those two.

Ms. Baldwin: I see.

Then I would suggest the motion that was passed should be 2a. The following one, if it is passed, should be 3a.

Mr. Chairman: We will come to the numbering of these things right after we deal with the substance.

At the moment we are dealing with subsection 9(6), as moved by Mr. Leluk. Is the motion understood? Is there any discussion? The words "within 24 hours" have been replaced by "as promptly as reasonably possible," to make it consistent with the previous motion.

Motion agreed to.

Mr. Chairman: We could use a motion on the renumbering here. What does counsel suggest these become now?

Ms. Baldwin: Let me not confuse you with the a's and b's. All a's and b's will disappear when the bill is reported back from committee and reprinted, but I mentioned 2a and 3a to help you understand where they would be inserted. I am suggesting the first motion that was just passed, which deals with examining books, go after subsection 9(2), which is the other one that dealt with examining books, and then we deal with copies for both.

Mr. Chairman: Is that acceptable to the committee members? Do you follow that? The two we just passed would become, for your purposes, subsections 9(3) and (4) and subsection 9(3) would become subsection 9(5), as

tney stand at the moment. The reference in that last motion we passed would be changed as well, referring back to subsection 9(3).

Miss Stephenson: I think I understand.

Mr. Chairman: We have just completed section 9. We will not pass it entirely because we are going to come back to that item tomorrow, but I have also suggested we adjourn at 5 p.m.; it is now 5:05. We will reconvene tomorrow morning at 10 a.m.

As far as I know, the room will be locked this evening. Mr. Bernstein has something to say before we adjourn.

Mr. Bernstein: May I just bring to your attention that the subsection of section 9 that says, "An inspector may at any reasonable time, on producing proper identification, enter business premises," etc., which I think was just passed, refers to "a record referred to in subsection 2." With the addition of these new provisions, I think it should say, "referred to in subsection 2 or subsection 4."

Mr. Leluk: We have changed all the numbers.

Mr. Bernstein: All right. As long as it is understood that it embraces all the records mentioned.

Mr. Chairman: I had omitted to mention that. Thank you.

The committee adjourned at 5:05 p.m.

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT

FRIDAY, APRIL 18, 1986



STANDING COMMITTEE ON SOCIAL DEVELOPMENT

CHAIRMAN: Jonnston, R. F. (Scarborough West NDP)

VICE-CHAIRMAN: Cooke, D. S. (Windsor-Riverside NDP)

Bernier, L. (Kenora PC)

Davis, W. C. (Scarborough Centre PC)

Jackson, C. (Burlington South PC)

Miller, G. I. (Haldimand-Norfolk L)

Offer, S. (Mississauga North L)

Keycraft, D. R. (Middlesex L)

Stephenson, B. M. (York Mills PC)

Swart, M. L. (Welland-Thorold NDP)

Ward, C. C. (Wentworth North L)

Substitutions:

Leluk, N. G. (York West PC) for Mr. Bernier

Wiseman, D. J. (Lanark PC) for Mr. Davis

Clerk: Carrozza, F.

Staff:

Baldwin, E., Legislative Counsel

Witnesses:

From the Ministry of Health:

Elston, Hon. M. J., Minister of Health (Huron-Bruce L)

Bernstein, D., Director, Legal Services Branch

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON SOCIAL DEVELOPMENT

Friday, April 18, 1986

The committee met at 10:06 a.m. in room 151.

ONTARIO DRUG BENEFIT ACT
PRESCRIPTION DRUG COST REGULATION ACT
(continued)

Consideration of Bill 54, An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs; and of Bill 55, An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs.

Mr. Chairman: I call the meeting to order. I know it is our habit to take the first half hour or so to get adjusted and to get into clause by clause, but I have a dream that this morning we will actually finish Bill 54. To do so will require us to get into things fairly sharply.

First, congratulations to the Liberal Party for its victory last night. That may get that out of the way, but I doubt it. Now we can move straight into clause by clause.

We were on section 9 and had not finished the vote. Dr. Stephenson was going to give us a motion on the question of confidentiality. She is a bit late, so I suggest we move back to section 5b, where we had a little difficulty with some ordering of the sections to make sure things were clear, and I think potential motions around arbitration were being added to this.

On section 5b:

Mr. Chairman: What has been distributed to you this morning is legal counsel's homework, for which we thank you very much.

Mr. Jackson: Has it been marked?

Mr. Chairman: You are about to do that. They tried to clear up some of the matters from yesterday. I will do a brief runthrough, and if counsel has anything to add, she should do so before we get into it.

What you essentially have in the regular type is all the original sections as amended, up to those we have not yet completed. Then you will notice there are underlined subsections, subsections 5b(13), (15), (16) and (17). These are wording changes that counsel thought would be helpful. I will ask you to explain how you came to the decision to take this approach to clarify it for us, and then perhaps we can deal with each of the changes that are new to us.

Ms. Baldwin: The first thing I did was to change the original version of subsections 5b(12) and (13). I just switched them around. I did this because the one I now have first, concerning resuming negotiations, logically happens first, so I thought that might be somewhat clearer.

There is a wording change in the new subsection 5b(13). It used to read "any time after seven days." I do not know the exact words, but that was essentially it, and I have changed it as it is here. Subject to the committee's approval, I do not think it is really going to affect the timing, although it may appear to do so in the first instance, and I think it will make what is going on a great deal clearer.

You will notice that the next several numbers are all underlined. I changed the order there. I have done this so the new subsections 5b(15), (16) and (17) can be together and all follow the description of the negotiation process. Subsections 5b(15), (16) and (17) deal with the issue of voting and accepting or rejecting the negotiating process.

In all three I have changed the words "committee's recommendation" to "committee's proposed fee," to knock out the confusion I think many people were having between the committee's recommendation and the chairman's recommendation. Those are the only changes in the new subsections 5b(15) and (16).

Subsection 5b(17) is a new subsection responding to Dr. Stephenson's concern, providing basically that if the minister or the association rejects the committee's proposed fee, the committee shall resume its negotiations and the section will continue to apply as if that had not happened.

We then go down to the dispensing fee, subsection 5b(18), and I just changed the word "amounts" to "fee," because I think it is clearer. Those are all the changes.

Mr. Chairman: Perhaps there is a modus operandi for us here. We consider section 5b still open. I will just get a confirmation from you in one fell swoop, if I can, that we have agreement on all those things that are passed up to and including subsection 5b(11). That is basically everything we had already passed yesterday in section 5b.

I will remind you that the changes start in underlinings here. Subsection 5b(12) is underlined because it is renumbered.

Ms. Baldwin: That is correct.

Mr. Chairman: Again, I am just trying to get the sequence into a more comprehensible order. We can leave all the renumbering to the end. Why do we not do that and deal with the substance first as we go through?

The first substantive change is in subsection 5b(13), which now tries to show that this is following the resumption of negotiations, subsequent to subsection 5b(12). It may be seven days or less, but it clears up the flow there. Would someone like to move that?

Mr. Ward moves that subsection 5b(13) now read:

"At any time after the committee resumes its negotiations under subsection (12), the minister or the association may make public the recommendation and the information upon which it was based, after first giving the other person 24 hours' written notice of the intention to do so."

Mr. Chairman: Is there any discussion?

Mr. Jackson: Why are we using the word "may" instead of "shall" when there was much made of the public nature of this process?

Hon. Mr. Elston: I shall attempt to explain. This is designed to provide the parties to this an opportunity to be flexible. If they are working in earnest and negotiating in good faith, we want them to keep on doing that rather than to spend time making all the documents public. It just makes it up to the parties, and that is where we want to leave it. When negotiations are going fine, we should let them go on. If there are problems and if either side can determine that release of the information to the public would be helpful to the process, then it may decide to do that.

Mr. Chairman: I know it is going to be difficult, but if we can keep away from having too much of the debate that we have already had on this, it would be useful. That was the idea. It allows either side--

Mr. Jackson: There was an amendment yesterday.

Mr. Chairman: I forgot the original number from yesterday, but the language following that introductory phrase--

Mr. Jackson: It was approved, but I understand it is open again.

Mr. Chairman: Yes.

Mr. Jackson: I have one final question to the minister. Does that mean that either party can make it public without the permission of the other and that this is understood in that wording?

Hon. Mr. Elston: Yes, it says "or" and "may."

Mr. Jackson: Okay, thank you.

Mr. Chairman: Is there any discussion? I will take the vote on this. This is the amended subsection 5b(13). All those in favour, please so indicate.

Motion agreed to.

Mr. Chairman: Subsection 5b(14) is a renumbering, which we can come back to just to clean it up at the end.

In subsection 5b(15) the words "committee's recommendation" have been changed to "proposed fee," so we are not getting this confused with the chairman's recommendation. Would someone care to move that?

Miss Stephenson moves that the words "proposed fee" be the last two words in that subsection.

Mr. Chairman: Is there any discussion?

Mr. Jackson: How complicated would it be to refer to it as the "proposed dispensing fee," since it is referred to in subsection 5b(9)?

Miss Stephenson: It is probably more appropriate.

Mr. Chairman: Is that all right with you, Dr. Stephenson?

Miss Stephenson: Yes.

Mr. Chairman: We can consider that a friendly amendment, and the last three words will be "proposed dispensing fee." All those in favour, please so indicate.

Motion agreed to.

Mr. Chairman: Dr. Stephenson moves an identical change to subsection 5b(16).

Motion agreed to.

Mr. Chairman: Mr. Jackson, you informed me that you had something you wanted to introduce on arbitration. Would this follow subsection 5b(17)?

Mr. Jackson: I think so.

Mr. Chairman: Subsection 5b(17) has been revised to meet some of the requests by Dr. Stephenson yesterday.

Miss Stephenson moves that subsection 5b(17) read as follows:

"If the minister or the association rejects the committee's proposed fee, the committee shall resume its negotiations within seven days thereafter and this section applies as if the committee had not proposed a fee."

Miss Stephenson: It means that subsection 5b(14) would apply equally in this circumstance once negotiations have resumed.

Mr. Chairman: Then subsection 5b(14) comes into place again.

This is a new subsection. Is there any further discussion?

Miss Stephenson: It would be "dispensing fee."

Mr. Jackson: "Proposed dispensing fee"?

Mr. Chairman: Agreed. We should keep the language consistent?

Interjection: Yes.

10:20 a.m.

Mr. Chairman: All those in favour of subsection 5b(17)?

Motion agreed to.

Mr. Chairman: We had not got to subsection 5b(18), as I recall.

Ms. Baldwin: That is also true of subsection 5b(14). We have skipped it, though I think it was discussed.

Mr. Chairman: It is true; I skipped over subsection 5b(14) thinking we had already dealt with that too. We set it aside because it was not clear where it would fit.

Miss Stephenson: It is clear now.

Mr. Chairman: We can go back to subsection 5b(14). Would somebody care to move subsection 5b(14)?

Mr. Reycraft moves that subsection 5b(14) should read: "If, after both sides on the committee have resumed negotiations in good faith, the minister

or the association believes that the committee's negotiations have again reached an impasse, that person, by written notice to the chairman and the other person, may terminate the negotiations."

Motion agreed to.

Mr. Chairman: We are now on subsection 5b(18).

Miss Stephenson: Surely there must be an alternative to clause 5b(18)(c). Clause (c), in effect, means there will be a unilateral establishment of the dispensing fee by the minister.

I have tried to explore all the circumstances within Ontario where the minister, as a result of negotiations breaking down, finally sets a fee or a price or something--a monetary remuneration. To my knowledge, there is not one. It seems peculiar in this circumstance. One recognizes that there must be finality to this process at some point and that it must be brought about fairly. As a result of concern for that fairness, we propose the motion Mr. Jackson is going to bring in, which is that, in this circumstance, there be an arbitration process under the Arbitrations Act. That would be clause 5b(18)(c).

Mr. Chairman: I will have Mr. Ward move the present clause 5b(18)(c), and then we can move to the amendment, if that is the way you would like to go, if it is not going to be a section that precedes it.

Mr. Ward: Did you want to split subsection 5b(18), or should I move all of subsection 5b(18)?

Mr. Chairman: If we introduce it all, then we can decide to split it as we go along.

Mr. Ward moves that subsection 5b(18) read as follows:

"The fee for the purpose of subsection 5a(2) shall be,

"(a) if the minister and the association both accept the committee's proposed fee"--

Miss Stephenson: It would be "dispensing fee."

Mr. Chairman: Yes. I will change all these to "dispensing fee":

"5b(18) The dispensing fee for the purpose of subsection 5a(2) shall be,

"(a) if the minister and the association both accept the committee's proposed dispensing fee, the dispensing fee proposed"--

Miss Stephenson: I think you could leave it out once.

Mr. Chairman: Yes, I think we should. "The proposed fee" would be "the dispensing fee proposed," whichever way you feel more comfortable, counsel:

"(b) if the minister and the association otherwise agree to a dispensing fee, the fee agreed upon; or

"(c) in all other cases, the dispensing fee provided for by the regulations."

Miss Stephenson: We would most certainly support clauses 5b(18)(a) and (b), but we believe (c) should be modified to encompass the establishment of an external arbitration. I am not worried about whether it is three men, one man or whatever, but it should be under the Arbitrations Act of Ontario to ensure that there is finalization, but a fair means of finalizing that.

Mr. Chairman: I do not know whether you have an amendment prepared. We clearly need an one.

Mr. Jackson: Mr. Davis read one into Hansard yesterday. I do not have it in written form, but he actually--

Miss Stephenson: It is incorrect because it says "the Labour Relations Act" and it should be "the Arbitrations Act."

Mr. Chairman: Perhaps if somebody can start looking for that, I will take the votes. We will subdivide this. If there is no disagreement on the first two, we can get the vote taken on that as you proceed.

Mr. Ward: Surely any amendments relate to clause 5b(18)(c) only.

Miss Stephenson: Yes.

Mr. Ward: What is the point of subdividing? If they want to move amendments to clause 5b(18)(c) or whatever, they can.

Mr. Chairman: Okay. I just wanted them to have time to find the amendment they want to propose.

Interjections.

Mr. Chairman: The clerk tells me the difficulty is that we do not have his motion because he took it with him.

Clerk of the Committee: He withdrew it until this section.

Miss Stephenson: In all other cases, the dispute will be the subject of an arbitration established under the Arbitrations Act.

Mr. Chairman: That is in order as far as I am concerned. We can debate the merit of it if you like.

It has been moved by Dr. Stephenson that in all other cases, the fee be established--

Miss Stephenson: The dispute.

Mr. Chairman: The dispute?

Miss Stephenson: Yes, because it still is a dispute.

Mr. Chairman: I will let you read it into the record then.

Miss Stephenson: "In all other cases, the dispute will be the subject of an arbitration established under the Arbitrations Act." The process is included. I do not know whether that is appropriate language.

Ms. Baldwin: If it approves this, I ask the committee to give me an opportunity, until the next meeting, to go back and check the Arbitrations Act to see if it is necessary to say anything more than that.

Miss Stephenson: I do not think it is, but that would be sensible.

Mr. Chairman: To be clear, you said, "The dispute will be the subject of an arbitration under the Arbitrations Act." This would replace the phrase "the fee provided for in the regulations." Clause (c) would now read, "In all other cases, the dispute will be the subject of an arbitration under the Arbitrations Act." Is there any discussion? Dr. Stephenson, you have talked a bit about it already.

Miss Stephenson: It is simply a matter of attempting to provide for a process that is similar to other mechanisms established for similar disputes or negotiations within governmental activity in this province. I was unable to find anywhere where the final decision in this kind of negotiation was a unilateral one on the part of the minister. In almost all other circumstances, there is some means made available for arbitration of an external variety.

In effect, we have established an internal arbitration process, with the committee and the committee chairman making a decision or a recommendation after gathering information. However, we have also provided that this may not be accepted. If it is not accepted by both parties and negotiation again fails, then it seems to me there must be one further step that will provide finality. You cannot let it go on for ever, because all it does is cause difficulty, as everyone has found. There must be a mechanism for ending it. Surely this is a fairer one than allowing one side or the other unilaterally to decide what that final figure will be.

Mr. Chairman: Is there any further discussion?

Mr. Jackson: I have a question for the minister. You have indicated that you do not support this because you feel more comfortable with an OMA model. Do you foresee extending that to other areas of the health care delivery system as the primary model? Is this the direction you would be encouraging us to move in, or should we be tightening up this process? A specific example would be if the discussions with the psychiatric doctors were to break down.

10:30 a.m.

Hon. Mr. Elston: I do not do that discussion with respect to their financial matters. I think this model provides us with the opportunity of going through a fairly well defined and open process of discussion. I think it is a good one for this particular situation. I have not taken this as a matter of policy and am not saying it is appropriate for every place. I think it has to be checked out and worked with, but I think this is a good one here where, in the past, negotiations and discussions, although sometimes protracted, have come up with a decision. I think this type of process is a good one here.

Mr. Jackson: If you are concerned about the protraction of the discussions, what are your thoughts on putting a termination on it? I am going back to the time line. If the arbitration amendment is unacceptable to you, then what about putting a time frame of, say, three or four months to the process, forcing you as the minister to resolve the dispute and not to leave it out there to anger and frustrate?

Hon. Mr. Elston: Do you mean to make a decision within a certain number of days?

Mr. Jackson: Yes.

Hon. Mr. Elston: Usually what happens is that there is an adjustment in fee. It has been a little bit up in the air recently, but generally there is an adjustment in fee when the new formulary comes out. That has not happened recently, as you know. The regulations are changed at the same time.

Mr. Chairman: If I might, this would have to be discussed under a subsequent amendment. It is not part of what we have before us at the moment.

Mr. Cooke has a question and then Dr. Stephenson.

Mr. D. S. Cooke: For Mr. Jackson's purposes, you might want to point out that there are some differences between direct employees of the government, such as psychiatrists who work full-time for the government in a provincially operated facility and--not trying to confuse that with a program that pays a fee for providing a service--the parallel might be the per diems we pay nursing homes for service. I am not sure what the process is there. There are negotiations, but there is no arbitration at the end, as I understand it, on behalf of the Ontario Nursing Home Association and the ministry.

Miss Stephenson: There may have to be at some point in this piece of legislation, which is the only piece of legislation I am aware of that deals with this matter at present, since there is no piece of legislation to deal with negotiation with the nursing homes, nor is there legislation related to negotiations with the OMA. However, we have stated that an impasse may be recognized in this legislation and that negotiations may terminate. If we permit that to happen, or if we legislate that it may happen, then there must be a resolution. Otherwise, you are left hanging on the edge of a volcano, for heaven knows how long, unless you decide the minister is the person who is going to have the right unilaterally to make the decision about what that fee will be. As I said, that is a most unusual circumstance.

Mr. Chairman: We had a fair amount of this debate yesterday as well. Is there anybody who has something to add at this point? If not, we will take the vote on the amendment, which is, in clause 5b(18)(c), to strike out the words "the fee provided for by the regulations" and replace them with "the dispute will be the subject of an arbitration under the Arbitrations Act."

All those in favour of the amendment please indicate.

All those opposed.

Five to four.

Motion negatived.

Mr. Chairman: We will go back to the debate on subsection 18 as written. Is there anything further?

Mr. Jackson: Are we doing clauses (18)(a), (b) and (c), or (18)(c).

Mr. Chairman: I had an idea that we had consensus on the first. You can split then if you want. I am flexible.

Mr. Jackson: No. I just wanted to know what I am voting on.

Mr. Chairman: I was taking them all together because, as Mr. Ward said, there seemed to be a consensus on the earlier part.

Mr. Jackson: That is fine. We can have a recorded vote.

Mr. Chairman: Yes, certainly. It is the clerk's time to participate here, which is good.

All those in favour of subsection 5b(18) please indicate.

The committee divided on subsection 5b(18), which was agreed to on the following vote:

Ayes

Cooke, D. S., Laughren, Miller, G. I., Offer, Reycraft, Ward.

Nays

Jackson, Leluk, Stephenson, Wiseman.

Ayes 6; nays 4.

Mr. Chairman: Mr. Ward moves subsection 5b(19) as follows:

"The minister and the association may enter into a written agreement respecting any aspect of the negotiation of the dispensing fee, and in the event of a conflict between a provision of the agreement and a provision of this section, the agreement prevails."

Mr. Chairman: Further debate on this matter?

All those in favour of subsection 5b(19) please indicate.

All those opposed please indicate.

Seven to two.

Motion agreed to.

Mr. Chairman: There are two things we should clear up. One is an understanding of the appropriate numbering, reflecting that what we have just gone through on section 5a is acceptable. Is there a consensus? Good.

The other thing is that legislative counsel has a request of us regarding what we have been trying to do around the dispensing fee and would like to make a suggestion to us to her work a little easier.

Ms. Baldwin: My suggestion arises out of the fact that I was somewhat confused about where we were putting it in and where we were not. When we look at subsection 5b(18), it says, "The fee for the purpose of subsection 5a(2)..." If you refer back to subsection 5a(2), which has already been passed, it says "fee." It does not say "dispensing fee."

I have two alternatives. The easier thing I can do, as you had indicated earlier when I referred to the proposed dispensing fee of the committee, is I

will call it a proposed dispensing fee throughout and otherwise keep it the way it is. The other alternative is that throughout, including section 5a, whenever I refer to a fee, I will refer to a dispensing fee. I am in your hands.

Miss Stephenson: It depends on whether it is in the definition section of the act. If "fee" is defined as "dispensing fee," then I can accept your suggestion that it should be "fee" throughout; but if it is not defined as "dispensing fee," then we should use "dispensing fee."

Ms. Baldwin: It is not defined, but in a sense it is not necessary to define it, because subsection 5a(2) reads, "The fee the minister shall pay to operators of pharmacies under subsection 1 for dispensing listed drugs for eligible persons...." That is the fee for the dispensing.

Mr. Chairman: I think we can leave it in your hands. Because it is not in subsection 5a(2), which precedes all this, why do we not leave it in your hands to make sure there is clarity on it where it comes up later on.

Ms. Baldwin: Thank you.

Mr. Chairman: Shall section 5b, as amended, carry?

All those in favour, please indicate.

All those opposed.

Section 5b, as amended, agreed to.

10:40 a.m.

On section 9:

Mr. Chairman: I would like to move up to section 9 again, which we had completed except that Dr. Stephenson had indicated a desire to try to come up with some wording around confidentiality that we might insert in this section.

Miss Stephenson: After yesterday's meeting, a discussion was held regarding the necessity for this and the form it should take.

As the chairman will know and as members of the committee may know, Justice Krever did an intensive examination of the matters related to confidentiality in the health area and made some strong recommendations. It is my understanding that the ministry will be translating those recommendations into general legislation at some point. The difficulty at present is with the phrase "at some point."

If this legislation is passed without some protection of confidentiality, we will have a hiatus of some significance in terms of length of time regarding the necessity to protect the privacy of individual patients whose records must be seized for purposes of accountability. In addition, it was suggested that this should not just apply to those hired as inspectors but also that members of the staff of the ministry who would be involved in administration of the Ontario drug benefit plan should be required to be subjected to the same degree of protection of confidentiality.

In discussion with Mr. Bernstein, it was suggested that perhaps over the

next week, during which time we will be having a hiatus as far as the legislation is concerned, the Ontario College of Pharmacy and the legal member of staff of the Ministry of Health might work on an appropriate section to ensure confidentiality, because it is impossible to transfer directly to this bill those sections related to that in the Health Disciplines Act. It was felt it would be necessary to look carefully at what the structure and the words should be for this section.

I would therefore ask the chair to stand down this section until such time as the ministry, after consulting with the Ontario College of Pharmacy, brings forward the appropriate section related to confidentiality.

Mr. Chairman: I will put your request to committee and to the minister and see where we go from there. Any comments, Minister?

Hon. Mr. Elston: I have no concern about exploring the possibility of confidentiality material. I do not know what that does to the report of the committee. If we can arrive at something, it could be introduced in committee of the whole House. I would hope we would move not to hold the bill up.

Miss Stephenson: The committee could report the bill without that section, noting that the section would be introduced in committee of the whole House.

Hon. Mr. Elston: The problem is, if we are anticipating it being introduced and we cannot arrive with appropriate wording, where does that put the committee report? That is my only concern.

I have no problem with trying to come to grips with figuring out what the confidentiality section might be. If we cannot arrive at one because, as I understand, historically it has been difficult to do that, then I do not know what more to say to Dr. Stephenson's request. I would be pleased to have my officials work at it, and if we can arrive at something we can do it at the committee of the whole House stage.

Miss Stephenson: The Krever report made much of the necessity for maintaining patient confidentiality. This is something that I do not think, in this day of computers, we should be letting go. If we produce something that is imperfect at this point, at least we will have a basis upon which to expand or modify in the future.

I believe strongly it is necessary to protect the information that relates to individuals which will be seized by inspectors and which will be known to administrators within the ODB. There is a mechanism for the Ontario health insurance plan; I am not sure that it is legislated, but it is there.

I would not like to see this legislation pass without recognizing the need for that confidentiality. I am not convinced it is impossible. It may be difficult, but I am not convinced it would be impossible to do it.

Mr. Chairman: There are a number of ways we could do it. We can do as you are suggesting, which is to not complete section 9 at this stage and to continue on. That would not be my preference.

My preference from the chair would be to have a request from the committee as we report the bill that this go to committee of the whole House, which would allow us to go back through and go over any matters at that stage that we thought were important. Any member of the Legislature can request that it go to committee of the whole as well as it comes back to the House.

We could request that so there is an understanding that it is desire of the committee to have a chance to do some touching up at that stage. That might be our easiest means of proceeding.

Hon. Mr. Elston: So I can be of help, may I provide an undertaking to the committee that our officials, with help from legislative counsel and otherwise, will prepare some sort of confidentiality clause for introduction when we go to committee of the whole House. I would prefer the committee to complete as far as possible its work on this. Then we can take a run at putting together a confidentiality clause.

Pernaps, the members of the steering committee could have an informal session to review the results of the deliberations on the construction of this clause before it is introduced at the committee stage in the House. Then we will know what we are getting into. I am prepared to undertake that here, if that is agreeable to committee members.

Mr. Jackson: I would like to get a clearer statement from the minister that he would include in those discussions a formulation of a recommendation made by Dr. Stephenson about the Ontario College of Pharmacists and the Ontario Pharmacists' Association.

Hon. Mr. Elston: Quite clearly, the drafting of a confidentiality clause, once it has been brought to our attention by the OCP and the OPA, is in the hands of our legislative counsel. I have no problem with sharing things. I do not want to tie up unnecessarily or--

Mr. Jackson: Burden yourself with consultation?

Hon. Mr. Elston: That is not right. Do not be so silly. I do not mind talking to people about it, but I think we can come to some kind of agreement about dealing with confidentiality and work it out among ourselves until we are satisfied with it. That is part of our job.

Mr. Jackson: Before you pass off the suggestion so lightly, Minister, would it be that painful an operation for you to sit down and discuss this clause with the aforementioned groups? Surely that is not inconveniencing you in any way.

Hon. Mr. Elston: Mr. Jackson, I am quite prepared to discuss the matter openly. We may take some advice from people at the drafting stage. I said I would come back to the members of the steering committee of this group so they would understand we had actually done our homework. How we get to that stage is, as always, appropriate for you to question if you wish, but we will get the best advice we can to construct a confidentiality clause. That is my undertaking to you.

Mr. Chairman: We can go two ways. We can stand things down now and try to deal with this before we finish Bill 54. I presume we want to report on both bills at the same time, so that means it is going to be some time before we get to report Bill 55.

On the other hand, if you want, we can hold final acceptance of Bill 54 until we get to the final acceptance of Bill 55 to see if there is something drafted by then and avoid the need to open everything else up in committee of the whole House when we go back. Do you want to leave it that way? We will vote on the section now but we will allow the possibility of re-entering by consent at a later stage.

Miss Stephenson: As a result of discussions with representatives of the ministry and the OCP last night, it was suggested that there be consultation between the legal people and the OCP. The OCP has some experience in this. If the bill passes as we hope it will, with sections in Bill 55 ensuring that the inspectors will be OCP inspectors--I am not sure if they already have sections within their bylaws about that, but there is something which ensures that the confidentiality of records is maintained by those inspectors.

The inspectors cited in Bill 54 are not necessarily members of the OCP, and therefore require some additional support in terms of confidentiality. When it was learned yesterday that we were not likely to be able to proceed before April 22 with all of Bill 54 and Bill 55, the suggestion was made that we could bring it back at the time that we came back to the bills once the House was in.

Mr. Chairman: I have indicated that we have a number of options. I just want to know which of them you want. Do you want to make another comment, Minister?

Hon. Mr. Elston: Yes, I do. In this legislation, I think it is relevant to note that these inspectors are really inspectors who are auditing financial matters. These are not--

Miss Stephenson: May I--

Hon. Mr. Elston: Go ahead, Bette. I will wait until you are finished.

10:50 a.m.

Mr. Chairman: I would rather you finish your statement and have somebody else finish theirs. We are getting into a very unnecessary debate about what a minister may or may not decide to do. I want to know what the committee wants to do about when we want to deal with this.

You can try to put pressure on the minister any way you want to about including whoever you want in the discussions. At the moment I want to know whether you want to do this by leaving the section open or by waiting to go through the finished bill but not take the final vote on this bill until we finish Bill 55 and, if this is ready, do it then. Or do you want to do it by going through the process the minister suggested of having it come back later to our steering committee, which could then make it public to whoever it wishes, I presume, and then deal with it in committee of the whole House?

Mr. D. S. Cooke: Why do we not proceed with Bill 54 and complete our work on it, with the understanding that the committee is going to be coming back to do Bill 55? The ministry will have a proposed amendment. We will certainly support going back to the section if we want to insert it at this level.

Dr. Stephenson may have her own proposed amendment on confidentiality. Let us try to complete one bill with the understanding that we are going to come back to one area, that is, confidentiality, when we come back in a couple of weeks.

Mr. Chairman: We can do that by consensus right now and by not taking a final vote on the bill. Is there general consensus from the Liberal members who have not participated in this discussion that we will finish Bill

54 but we will not take our final vote on it? After we have done Bill 55, we will see if we are prepared at that time to address the confidentiality question in Bill 54 before taking the final vote. If we are not, I presume we do it when it gets to committee of the whole House, and there would be that kind of recommendation from us. Is that agreeable?

Miss Stephenson: Fine.

Mr. Chairman: The other point is that there may be some other section in Bill 55 envisaged in our confidentiality, so it might be appropriate to deal with the two things at the same time when they are ready at that time.

Let us take the vote on the section 9 in total that we have at this point, as amended.

Interjection: Is section 5 in total?

Mr. Chairman: No, section 5b is in total.

All those in favour of section 9, as amended, please indicate.

Mr. Jackson: Could we have that read? I am sorry.

Mr. Chairman: All section 9 again?

Mr. Jackson: When you said amended--

Miss Stephenson: There were amendments that we passed yesterday.

Mr. Jackson: I know that. I have my notes in front of me.

Mr. Chairman: We put in your version of your 10--

Miss Stephenson: Subsection 10(9).

Mr. Jackson: Right.

Mr. Chairman: Subsections 10(4) and (5) between 9--unfortunately, I forget the numbers now.

Miss Stephenson: Subsections 9(2) and (3), subsections 10(4) and 10(5).

Mr. Chairman: Thank you. The 24 hours amendment was also passed. Those are the substantive ones I can remember.

Mr. Jackson: Thank you.

Miss Stephenson: You did not pass the 24 hours.

Mr. Chairman: That is right. It was not passed. We made the change in the second one to make it "as promptly as reasonably possible" to make it go along with that.

All of those in favour of passage of section 9, as amended, please indicate.

All those opposed?

Section 9, as amended, agreed to.

Mr. Chairman: Six to four. I am only making that position clear, Mr. Leluk.

I suggest at this point we go back to section 5.

Miss Stephenson: In the numbering of 9, subsection 4, which was originally there, is now subsection--

Mr. Chairman: Are we talking about 9?

Miss Stephenson: That is the one, "An inspector may, at any reasonable time, on producing proper identification." Legislative counsel had made a recommendation about the numbering of that section about entering at any reasonable time.

Mr. Chairman: We had a consensus--

Miss Stephenson: I cannot remember what it was and I did not put it down here.

Mr. Chairman: I am sorry. The consensus was only that we would allow her to make the appropriate references back to the new numbers because of the two additional subsections we put in.

Miss Stephenson: And we do not have those. Fine.

Mr. Chairman: As you may recall, it was brought to my attention that section 5 had not been dealt with. One of the reasons was we had to deal with sections 5a and 5b before we could deal with it. I will ask you to go back to page 8, as I recall. Let me just see if I am wrong.

Mr. Reycraft: Page 6.

Mr. Chairman: No. None of these has anything to do with best available price. They were earlier ones. Is there a straight section 5 as well?

Clerk of the Committee: We have passed sections 5a and 5b, but not section 5.

Mr. Chairman: I will try to bring you up to date on this. As you may recall, we stood down a motion by Mr. Ward that subsection 5(1) of the bill be amended by striking out "by the regulations in the fourth and fifth lines" and inserting in lieu thereof "under section 5a." We stood that down until we had dealt with section 5a. Because Mr. Leluk's motion just follows that and deals with best available pricing, is it not better to go through and finish off?

Some of these are stood down for section 5 and some for section 11. Maybe we should go through and deal with the best available price question.

Mr. Ward: The only concern I had was that everything we are doing on best available price is under section 11 anyway. If you read section 5a, it says "the regulations," which are then covered under section 11. Maybe it is prudent to go straight to section 11.

Mr. Chairman: I think it is. Is there general agreement? We will go through sections 10 and 11, then deal with the tidying up of those earlier subsections to go along with that. We are moving to section 10, which is on page 21 of the combined sheet.

On section 10:

Mr. Chairman: I will read them all out. That might be the easiest way; then we can come back to them. I will read out the list of clauses, (a) through (e).

"10(1) A person who,

"(a) contravenes section 1 (charges a person other than the minister);

"(b) contravenes subsection 7(2) (supplier charges contrary to agreement);

"(c) contravenes section 8 (refuses to dispense);

"(d) refuses to submit information or knowingly furnishes false or incomplete information required to be submitted under this act or the regulations; or

"(e) obstructs a person carrying out an inspection under section 9,

"and any director or officer of a corporation who authorizes or permits such a contravention by the corporation, is guilty of an offence and on conviction is liable to a penalty of not more than \$10,000."

I presume that will be put in the name of Mr. Ward again, just to make sure we are covered on this. Are there amendments, or are these for something else? Perhaps we should do these clause by clause. Shall we start at the top and work down? Are there any amendments to clause 10(1)(a)? To clause (b)? No difficulty? To clause (c), (d) or (e)? We have agreement on these. It seems the difficulty is on the question of the fine in the part after the clauses. Is there an amendment?

11 a.m

Miss Stephenson: Before we talk about amounts of money, when there is a section related to confidentiality regarding the administration of the act there needs to be a subsection that deals with those who contravene the confidentiality clause.

Mr. Chairman: We will have to put it in with that confidentiality clause when we do it. It could be the easiest way. When we go back, we can determine what we prefer then.

Miss Stephenson: Could we note that would probably be a necessity when that clause is considered?

Mr. Chairman: That is noted. Is there anything further on the fine in this section?

Mr. Jackson moves that the word "\$10,000" be struck and the following be substituted therefor, "\$5,000 for a first offence and \$10,000 for a second and subsequent offence."

That is in order. Is there any discussion?

Mr. Leluk: The depositions appearing before the committee expressed the opinion that these penalties are excessive and actually punitive. We are not dealing with criminals here. By and large, pharmacists are law-abiding citizens.

Hon. Mr. Elston: Penalties are by their nature punitive.

Mr. Leluk: They are more punitive when set at \$10,000 and \$50,000, Minister. I see in today's Globe and Mail that the government has already expressed its willingness to cut the \$10,000 maximum fine for extra billing that many doctors have complained stigmatizes them as criminals. I do not think pharmacists are any worse corporate citizens than physicians.

The Attorney General (Mr. Scott) appeared to suggest in London on Wednesday night that the government has proposed a \$1,000 fine. Our party feels this is excessive and should be consistent with the fine of \$5,000 in the Health Disciplines Act. This is in keeping with the OPA proposal that the fines be limited to \$5,000 on the first offence and \$10,000 on the second.

Mr. Chairman: Is there any further discussion?

Mr. Ward: Very briefly, we will support the amendment as it relates to the individual on this specific item. It is worth noting that the OCP established a fine of \$5,000 many years ago; so it is updated in terms of the original amounts put into the legislation. It reflected the changes in inflation and the extent to which the fines were considered quite low, even by the profession.

It is also worth noting that in some instances of fraud or violations of the act, it is not unusual that the amounts being talked about can be in the neighbourhood of \$100,000 or \$150,000.

Miss Stephenson: Violations of which act?

Mr. Ward: In terms of corporations and charges--

Miss Stephenson: We do not have an act yet; so what are you talking about?

Mr. Chairman: I do not know why committee members would want to debate this further when they think they have a consensus, but that is obviously their privilege. Why do we not take a vote on it?

Motion agreed to.

Mr. Chairman: Subsection 10(1), as amended: All those in favour please indicate. Carried.

Subsection 10(2): "The maximum penalty that may be imposed upon a corporation is \$50,000 and not as provided in subsection 1."

Is there any discussion on that?

Mr. Leluk: I would move that the \$50,000 figure be amended to \$5,000 and to \$10,000 for a subsequent offence.

Mr. Chairman: Will that be the same wording as in the previous motion?

Mr. Leluk: Yes.

Mr. Chairman: The motion will be to replace the figure "\$50,000" with the words "\$5,000 for a first offence and \$10,000 for a second or subsequent offence." Do you want to speak to it further, Mr. Leluk?

Mr. Leluk: For the same reasons: There are incorporated pharmacies. We are looking at small operations. If we look at the average salaries of pharmacists are making, I feel the penalties suggested by the government are excessive by comparison.

Mr. D. S. Cooke: I am concerned that if the penalties in this area are changed substantially, we will not have a substantial deterrent built into the bill. There have been serious problems in the administration of this program. The reality is that no one will face this fine if he or she does not break the law. I hope we will keep this fine as is.

Ms. Baldwin: If I understand the motion correctly, it is knocking out \$50,000 and substituting for it the amount in the previous subsection. If that is the case, you would be voting against the subsection and then automatically that would be the offence in all cases.

Mr. Chairman: Actually, maybe that is the easiest way to deal with it. I think I incorrectly did not rule that would be the easiest way. If it has the same intent as the previous subsection, and the word "corporation" is used in the previous subsection, then there is no need to make this distinction. The easiest thing would be to vote against the section, but the amendment is not in order.

11:10 a.m.

Miss Stephenson: There is a necessity in this circumstance, it seems to me, to separate the incorporated pharmacy from what--if you go back to subsection 10(2)--is a corporation. That, I think, is the basis of the argument that was presented by Mr. Leluk.

Was it the intent of the minister to fine the corporations, such as drug wholesalers and drug manufacturers, at a significantly higher level? Having suggested that these are corporations, you have swept into the basket those pharmacies that are incorporated as well. In many circumstances, they are most likely unable to accommodate a penalty of \$50,000. If you want to make this clear, you had better reword it.

Mr. Chairman: I think the motion is in order. I am incorrect. The references to corporations are "of a corporation" and do not speak to the corporation itself; so your motion is in order, Mr. Leluk. You may continue to debate it. You may not like the wording the way it is.

Miss Stephenson: Then the action is to defeat it as it is currently written and rewrite it?

Mr. Chairman: There can be a subsequent amendment.

Miss Stephenson: Could I ask the minister what it is he meant by the section? Was he trying to get at incorporated pharmacies?

Mr. Leluk: Yes. What were you trying to say?

Hon. Mr. Elston: The intent of the section is to get any corporation that violates this act; that provides us with up to \$50,000 in penalty. A broad range of considerations could work on the fine that is imposed. That would include pharmacists and incorporated entities as well as the manufacturers and distributors. We have a broad range and, of course, what happens is that the courts will weigh in that context what the significant activity is that warrants the fine.

I think it becomes more difficult and much more complicated if we end up saying, "This corporation, but not that corporation and perhaps this corporation." What we have here is a broad range of fines that are available to be used to deal with the nature of the offence. I think it has to stay, and it has to be a substantial one because the nature of the misleading that could occur could amount to several hundred thousand dollars perhaps.

Mr. Laughren: Members of the committee should note the wording carefully; it does say, "the maximum penalty." Given the seriousness of the bill and the ramifications of the bill, \$50,000 is not onerous. It is not a compulsory \$50,000 fine; it is a maximum, and presumably judgement would be shown as to the size of the operation if there were an infraction. I do not think this is an inappropriate fine.

Mr. Jackson: At any point, Minister, was there discussion with OCP or OPA in terms of a distinction or a differentiation between incorporated pharmacies and drug manufacturers?

Hon. Mr. Elston: I talked to a lot of people about that. I cannot say for sure that we talked about that exact thing. I know we considered it in talking to pharmacists, but I do not know for sure whether those included--some people down there are nodding that it did occur.

Mr. Chairman: Some are shaking their heads.

Hon. Mr. Elston: Some are just nodding off, I think.

Miss Stephenson: That is understandable.

Hon. Mr. Elston: My concern is that this gives us a broad range of possibilities for corporations. I know we did talk about those who are not incorporated and those who are incorporated, but I think it is significant that we have in this a very straightforward section, and a judge sitting on this has all the circumstances to weigh so that he can go up to \$50,000 for very serious problems which he adjudicates on.

I think this is the best way. It leaves a flexible nature for any judge who is involved in setting a fine.

Miss Stephenson: This section specifically refers to an incorporated pharmacist, for example, who may be one person; it cannot be dealt with in the same way that a single pharmacist is in section 1. It states very specifically that this may not be dealt with "as provided for in subsection 1."

Hon. Mr. Elston: No. Actually, that is not quite correct. The director or officer, which would be a single member of the corporation, can also be fined as a result. If they permit the corporation to violate, they would be treated in the same manner as an individual would be. But the corporate entity could be charged. It happens.

Mr. Jackson: So a single person could end up being charged as a single proprietor and as the--

Hon. Mr. Elston: No, not as a single proprietor. If you are single proprietor, you are charged only once because you are operating as a proprietor.

Mr. Jackson: I am sorry. It was an inappropriate use of words.

Hon. Mr. Elston: Yes, as an officer.

Mr. Jackson: Could he be sued as a single person and then as a corporate entity?

Hon. Mr. Elston: No. He could be sued as an officer or director of a corporation. The corporation could be sued also because the officer or director is a separate individual, for the purposes of the law, from that of the nature of the corporation. That is the way we work in this jurisdiction; there is responsibility and liability for corporate directors and officials.

Mr. D. S. Cooke: I might point out to the official opposition that when we get into the next set of amendments, which is going to ask or force manufacturers to supply drugs at the same price, the best available price, it becomes even more difficult to enforce if we do not have a substantial fine. Without a \$50,000 fine being in there, I do not think it would be possible for the best available price to work.

Mr. Jackson: Mr. Cooke makes a valid point, which is to the one we are not arguing. The point we are arguing is the distinction between--

Mr. Chairman: There should be a distinction between the small ones and the large ones.

Mr. Jackson: Since Hansard has recognized that there seems to be some confusion and disagreement about the level of consultation on this point, could I request this item be stood down in the hope we can come up with some other language or treat it--

Mr. Laughren: No.

Mr. Jackson: No? Mr. Laughren--

Mr. Chairman: Just a second. You can request it, but there is already a recommendation for a proposed amendment by the OCP, stating they should be dealt with in the same way. I remember in deputations we had that the same suggestion was made, not by the overall organization of pharmacists but by many pharmacists as well. We have, or at least I thought I had, a fairly clear idea of what the recommendations from those groups were. Do I gather there is not a consensus for it to be stood down?

Mr. Jackson: No. The point is that no one has shown the initiative to try to create a distinction. I believe that is the process we are responsible for here. If Bill 54 is not going to be completed this morning, I am merely asking that we be given an opportunity to develop something over the weekend and present it to the committee. It may not bear any fruit, but the arguments may be valid and should be reviewed by this committee. I am not taking exception to a fine that reflects more accurately the amount of revenue involved with the major drug manufacturers. I am not arguing that point.

Mr. Chairman: I understand. My difficulty is that unless there is agreement that it be stood down, then we have to continue to deal with the section as it is now. There does not seem to be a consensus, but from what I am hearing in the debate, there does seem to be a difference of opinion as to whether that is necessary and whether there is sufficient flexibility within the concept of the maximum fine. That seems to be where the difference of opinion lies at the moment. I do not sense that there is a great consensus as yet to move away to some other form of distinction that might be made later, unless I hear otherwise.

Mr. Jackson: Could we define in this a nondispensing corporation? Can we tie it to that in some way?

Mr. Chairman: It is possible for you to make a motion to amend.

Mr. Jackson: I am winging it; that is pretty obvious. I need some guidance. I am trying to create a distinction around the word "corporation" which would separate it from a dispenser.

Mr. Chairman: You can move an amendment to the amendment if you wish, although it would be difficult to see where it would fit in. We will probably have to take the vote on the amounts first. I would presume your amendment would be back around the word "corporation," prior to Mr. Leluk's amendment. You could try to put a qualifier in there to amend that section.

Mr. Jackson: We could approve it as it is but then come back to amend it--how did I hear you?

Mr. Chairman: What I am saying is that it is impossible for you to amend Mr. Leluk's motion, which is specifically around the dollar figure, unless you are doing something with that dollar figure.

Mr. Jackson: I am sorry; I had forgotten we were on his motion.

11:20 a.m.

Mr. Chairman: Exactly. But when we come back to subsection 2, you can move a further amendment at any place you wish, and such an amendment could be to put in a qualifier on "corporation."

Mr. Leluk: Is there no way of my withdrawing mine?

Mr. Chairman: Yes.

Mr. Jackson: You can withdraw yours.

Mr. Leluk: Would it be better to withdraw mine?

Mr. Chairman: Yes. You can withdraw yours.

Mr. Leluk: The problem really is around the definition of "corporation" as it relates to the retail pharmacy as opposed to drug manufacturing and drug wholesaling.

Should I withdraw it?

Interjection: Yes.

Mr. Leluk: I will withdraw my amendment then.

Mr. Chairman: Mr. Leluk has withdrawn his amendment. We are therefore debating subsection 10(2) as initially read.

Mr. Jackson: If I might I make a motion, I would move that the maximum penalty that may be imposed upon a corporation other than an incorporated retail pharmacy is \$50,000 and not as provided in subsection 10(1).

I would like to ask the advice of the legal counsel. Does that in any way violate our definition of a pharmacy, or is it clear? More directly, would that achieve the objective we are attempting to reach, which is to distinguish between a drug manufacturer and a drug dispenser?

Ms. Baldwin: I think it accomplishes your purpose.

Mr. Chairman: There may be some question about whether hospital pharmacies are involved.

Mr. Jackson: There is no need to speak to it; its intention is understood.

Mr. Chairman: The motion is understood. Mr. Jackson moves that subsection 10(2) be amended by placing the words "other than an incorporated retail pharmacy" after the word "corporation."

Mr. Jackson: Can we have a recorded vote on this, Mr. Chairman?

The committee divided on Mr. Jackson's amendment, which was negatived on the following vote:

Ayes

Jackson, Leluk, Stephenson, B. M., Wiseman.

Nays

Cooke, D. S., Laughren, Miller, G. I., Offer, Keycraft, Ward.

Ayes 4; nays 6.

Mr. Laughren: I have faith in the capitalist system of justice.

Mr. Chairman: Is there any further discussion on subsection 10(2)?

All those in favour of subsection 10(2) please indicate. All those opposed. Carried.

Section 10 agreed to.

Mr. Chairman: Mr. D. S. Cooke moves that the bill be amended by adding the following section:

"10a (1) A manufacturer of a drug or a substance that is designated or being considered for designation as a listed drug or a listed substance shall,

"(a) supply that drug or substance for the same price to all purchasers in Ontario, other than public hospitals, who purchase the drug or substance in the same dosage, form and strength; and

"(b) give to the minister, on request, the information prescribed by the regulations concerning the production and sale of the drug or substance.

"(2) where a manufacturer of a drug or a substance contravenes this section or obstructs a person carrying out an inspection under section 9, the Lieutenant Governor in Council may refuse to designate the drug or substance as a listed drug or listed substance or, where it is already so designated, may remove that designation."

The motion is in order. We will be cleaning it up to make it "drug product" throughout instead of "drug," to make it consistent.

Mr. D. S. Cooke: Right. This is obviously one of the sections that will enable the best available price concept to be incorporated into the bill, the next section being the major one. This is just suggesting that if manufacturers want to be listed in the ODB formulary, one of the conditions for being listed is that they supply this drug to all who buy it at maximum quantities at the same price.

Miss Stephenson: I wonder whether Mr. Cooke would run through that again. He said something about maximum quantity, but he said nothing about quantity in his motion.

Mr. D. S. Cooke: It says, "Supply the drug or drug substance for the same price to all purchasers in Ontario other than public hospitals." We then get into section 11 when we talk about best available price. This simply says that a manufacturer has to supply it to everybody for the same price. If they do not do that, they can be delisted or not listed.

Miss Stephenson: You are saying that the same price must prevail whether the purchaser buys one pill or 10,000 pills? Is that what you are saying?

Mr. D. S. Cooke: Obviously not. Perhaps legal counsel can help. That is certainly not the intention and that is not my understanding of what we are suggesting.

Miss Stephenson: When you read this, you did not include the word "quantity." That is why I am asking the question.

Mr. D. S. Cooke: It is not in quantity in our final amendment either, which has been circulated. The one you have is not the final amendment. That was circulated the first day the committee came back.

Mr. Leluk: This is not on it?

Mr. D. S. Cooke: No, I circulated it the first day the committee came for clause-by-clause consideration.

Mr. Chairman: What is the exact difference between this and what shows up in Mr. Nigro's compilation? I notice at the end of clause 10a(1)(a) you have taken out the words "package, size and quantity" from what was initially there. Is that accurate or fair?

Mr. D. S. Cooke: Right.

Mr. Chairman: I am then working by the other one. Are there any other changes? Just so I can be clear--I have been working from the other one--are there other changes from the initial one?

Mr. D. S. Cooke: I have not compared the initial one word for word.

Mr. Chairman: Never mind, I will work from yours.

Mr. D. S. Cooke: I have circulated it. Perhaps legal counsel can help me out. I know what I wanted in this section. What I wanted in this section was that manufacturers are not going to be able to sell to wholesaler A at one price and somebody else at a different price. If there is a particular price for a drug, that is something that is going to be available to all pharmacists and wholesalers in the province. As a way to enforce that, it becomes a condition for listing.

Ms. Baldwin: I guess the question comes down to the question of whether you want the price to depend on the quantity of the drug sold or not. If you do, it would have to be inserted in there; if you do not, it does not need to be.

Mr. D. S. Cooke: I am not sure that in this section you need that. We get in the next section the definition of "best available price." All this section says is that you cannot discriminate in your selling practices.

Mr. Chairman: Anything from legal counsel before I go to Dr. Stephenson?

Miss Stephenson: I am neither a retailer nor a wholesaler, but as I understand it, it costs more to deliver one package of one substance than it does to deliver 1,000 packages of one substance because you have to keep running back and forth to deliver the one package two or three times a day. That costs more money. Therefore, surely, there is some rationale for including "equal quantity" within this. I do not disagree with the direction the section is attempting to pursue.

Mr. Jackson: It is the same as ours.

Miss Stephenson: It very much parallels one we had suggested strongly. One has to be realistic about this and suggest that there really must be some kind of other measure which will ensure there is not a huge cost attached to delivering one package seven times a day and having to charge the same price for it.

11:30 a.m.

Mr. Chairman: It would not be out of order to have an amendment to that effect. We will try to work on that.

Miss Stephenson: I would amend Mr. Cooke's motion to include the original words he had in his first amendment, and those are "package, size and quantity."

Mr. Chairman: It is in order to move that.

Miss Stephenson: All right, then just "quantity" will do.

Mr. Jackson: Just "quantity" at this point.

Mr. Chairman: "And quantity"? As I understand this, this would be clause 10a(1)(a). After the words "and strength" would be the words "and quantity and;"

Ms. Baldwin: Excuse me, may I suggest that it say "for the same quantity," instead of "and quantity"?

Miss Stephenson: That is what I was trying to get at.

Mr. Chairman: "And for the same quantity," or just "for the same quantity"?

Ms. Baldwin: I think "for the same quantity" would be sufficient.

Mr. Chairman: Is that a friendly amendment? It is a friendly amendment.

Miss Stephenson: It should not be at the end. It should be "who purchase"--

Mr. Chairman: "The drug or substance--"

Miss Stephenson: "The same quantity of the drug product or substance in the same dosage, form and strength."

Ms. Baldwin: That would also be fine.

Mr. Chairman: Is it understood? It will read as follows, "Supply that drug product or substance for the same price to all purchasers in Ontario, other than public hospitals, who purchase the same quantity of the drug product or substance in the same dosage, form and strength and;"

It continues to be a friendly amendment as if it was part of the original motion. It does not have to be discussed any further. We are now debating the entire motion.

Mr. Jackson: I would like to propose a friendly amendment as well, if I might, after the words--

Mr. Chairman: You can always try.

Mr. Jackson: I will try.

Interjection: This is Friday.

Mr. Jackson: It is Friday. "Other than public hospitals for their own use."

Mr. Chairman: Where is this, "other than for their own use?"

Mr. D. S. Cooke: I understand that. That is fine.

Mr. Chairman: That is two.

Mr. Jackson: Too friendly; I cannot take this.

Mr. Bernstein: The concept of "public hospital for its own use," those words, just by themselves, may be a little ambiguous. I think perhaps the full concept is "public hospital purchasing solely for use in the treatment of patients and outpatients of the hospital and not for sale or distribution to operators of pharmacies."

Mr. Chairman: I think that was probably the intent. No?

Miss Stephenson: There is yet another intent and that is where the public hospital is indeed functioning as a retail agency for individuals outside the hospital. If we do not provide some kind of protection for the retail pharmacists the unfair competition, which can be engendered by this kind of activity, is going to be increased.

Mr. Chairman: While you try to work this out among the mover--

Mr. Jackson: What is the problem?

Mr. Chairman: There is some concern about how definitive "for their own use" is. May I also throw into the works whether or not our early exemptions of the public hospitals, which we have now defined within the act, would have any impact on the need for that wording at this stage? If we are referring to them as other than public hospitals and we know about the exemptions earlier on, do those early sections cover us on this or do we need the extra clarification of one sort or another that is being sought?

Mr. Bernstein: In my judgement, you do need the extra words. You still have to distinguish between one public hospital and another public hospital.

Mr. D. S. Cooke: Do you need to put in the part about for inpatients and for their own outpatients? Why can you not drop that which allows them to continue as retail outlets without restricting access to their service? You do not want hospitals to become wholesalers.

Mr. Ward: We have stood down a section under definitions on page 3, that "any purchaser" does not include a hospital that is a public hospital under the Public Hospitals Act. Even if you left it as "any purchaser" under your definitions, it does not apply to hospitals. Is an amendment needed for defining "any purchaser"?

Mr. Bernstein: That proposal may not be specific enough because if I understand it, the intention is that a public hospital functioning as an accredited retail pharmacy is a purchaser to whom these provisions should apply equally with all other purchasers. Only the hospital is purchasing solely for use in the treatment of its patients and outpatients and for no other commercial purpose whose purchases should be excluded from consideration. That is the intent.

Mr. Chairman: Can we say for noncommercial purposes? I had a friendly amendment which legal counsel has raised some concern over, adding the words, "for their own use" after the word "hospitals."

Mr. D. S. Cooke: Could Mr. Bernstein run through his suggested amendment again?

Mr. Bernstein: Mr. Chairman, it might read: Other than public hospitals purchasing solely for use in the treatment of patients and outpatients of the hospital. Perhaps we can stop there. Legislative counsel might be able to comment.

Ms. Baldwin: Could you read that through once more please.

Mr. Bernstein: Other than public hospitals purchasing solely for use in the treatment of patients and outpatients of the hospital.

Ms. Baldwin: The intent is to exclude those instances in which they are wholesalers selling to other operators of pharmacies?

Mr. Bernstein: Or to the public.

Ms. Baldwin: Or resale to the public. That accomplishes it, yes.

Mr. Chairman: The other was a friendly amendment. This is accepted by the mover and so is now part of the motion.

Clause 10a(1)(a) "Supply that drug product or substance for the same price to all purchasers in Ontario, other than public hospitals purchasing solely for the use in the treatment of patients and outpatients in the hospital, who purchase the same quantity of the drug product or the substance in the same dosage, form and strength."

Ms. Baldwin: Given that this long clause has gone in I suggest instead of "who" we say "where the purchasers" so we know what the "who" refers back to. It has become lost. I ask for the committee's permission to fix it up.

Mr. Chairman: That is fine, so fixed. Any further discussion on any of this?

Hon. Mr. Elston: We are conferring here. Could we deal with the question of "same quantity" to make sure we get that clarified and perhaps even expanded before we vote?

Mr. Chairman: There is no other discussion? We are about to hear some concerns about a more precise definition of quantity.

11:40 a.m.

Miss Stephenson: How do we stand on quantity?

Mr. Chairman: I do not know. We are just about to find out.

Mr. Ward: Make it bigger.

Mr. Chairman: Where is this coming from?

Mr. Ward: It is a friendly amendment.

Mr. Chairman: You pose the amendment, then it is determined as to whether it is friendly.

Hon. Mr. Elston: We have to find out where this "same quantity" item will be inserted.

Mr. Chairman: "Same quantity" comes after the word "purchase" on the fourth line.

Miss Stephenson: "Purchase the same quantity of the drug product."

Hon. Mr. Elston: Our concern would be answered if we could put some words after "same quantity."

Mr. Ward: "The same quantity of individual units." That is to avoid any manipulation of the act in terms of package sizes.

Mr. Chairman: That is friendly.

Mr. D. S. Cooke: We are talking about a per unit price.

Mr. Chairman: Yes, it is essential just to be clear that when we talk quantity we are also talking unit price. I gather that is the idea behind it.

Interjection.

Mr. Chairman: "Of individual units."

Mr. Ward: So that they do not use multiples of a particular size to establish the size.

Miss Stephenson: That is like "package size" in the original.

Mr. Ward: It is the same quantity.

Mr. Chairman: Why do I not ask our legal counsel to read this for you? I would feel more confident if it were done in that fashion; then we can carry on.

Ms. Baldwin: I am just going to read clause (a), if that is okay.

Mr. Chairman: That is right, just clause (a).

Ms. Baldwin: "(a) supply that drug product or substance for the same price to all purchasers in Ontario, other than public hospitals purchasing solely for use in the treatment of patients and outpatients in the hospital, where the purchasers purchase the same quantity of individual units of the drug or substance in the same dosage form and strength and;"

Miss Stephenson: "Drug product or substance."

Mr. Chairman: Of course, "drug product" would replace "drug" in each instance.

Ms. Baldwin: Yes. Where did it come up?

Mr. Chairman: "Supply that drug product or substance," and the fourth line.

Ms. Baldwin: That is fine.

Mr. Chairman: Is there any further discussion? You may be surprised to know that it is a totally unamended motion.

Mr. Jackson: All-party, friendly.

Mr. Chairman: It is a very friendly, all-party motion.

Hon. Mr. Elston: There is some concern--

Mr. Jackson: We have an unfriendly minister, but we have friendly amendments.

Hon. Mr. Elston: It is really with respect to the word "substance." The concept we are about to debate next does in fact apply to the drug products, but not to substances, which are subject to individual contractual arrangements. That causes some confusion in that section. "Substance" should probably be removed.

Mr. Chairman: We are talking about the difference between supplying an individual drug product and supplying oxygen and a contract that might be--

Hon. Mr. Elston: Right. Substances, of course, are contractual arrangements for supply rather than being--

Interjections.

Hon. Mr. Elston: I think that "substance" would confuse items if we were required to do it.

Mr. D. S. Cooke: So we should drop the word "substance" in clauses (a) and (b)?

Mr. Chairman: Right. Or "substance" would be deleted in the two instances in clause (a).

Mr. Jackson: Could you explain why it is being withdrawn?

Hon. Mr. Elston: The concept of best available price, which is about to be debated, would apply to the drug products. BAP does not, however, apply to substances, which are really provided under contractual arrangements in both cases.

Mr. Jackson: Such as?

Miss Stephenson: This section relates to listing, not BAP.

Mr. Jackson: That is right, the listing of a substance.

Interjections.

Mr. Jackson: I just want to understand if I have that right.

Mr. Chairman: I hope we all do. Who feels they can clarify the question of oxygen being provided to somebody? Why is there no point in having it listed in this section?

Mr. Bernstein: There is no point in requiring the manufacturer of a listed substance to sell it at the same price for the same quantity because best available price, or some control over the price, is not relevant to listed substances in the same way it is to listed drug products. The whole purpose of section 10a, as I understand it, is as part of the control over the best available price.

Mr. Chairman: The mover is accepting this, so the dropping of "or substance" from those two references in that area becomes a friendly amendment and just part of the present wording.

Does this also apply then to subsection 2, Mr. Cooke? Do you drop it from there where it is mentioned twice?

Mr. D. S. Cooke: Do we need to gather the information?

Mr. Bernstein: No, not for "substances."

Mr. Chairman: So it will also be dropped from the three references in subsection 2?

Mr. Jackson: I see four.

Mr. Chairman: Have I missed one?

Mr. Jackson: Subsection 10a(1)--

Mr. Chairman: I am sorry. I was talking about the three in subsection 2 itself.

Mr. Jackson: There is actually a fifth. There are two in subsection 10a(1).

Mr. Chairman: And one in 10a(1)(b). All references in this amendment to "a listed substance" or "substance" will be removed.

All those in favour of Mr. Cooke's motion, unamended, but greatly enhanced and changed, please indicate.

Motion agreed to..

Mr. Chairman: Section 10a will now stand as part of the bill.

Hon. Mr. Elston: We have not done subsection 10a(2) yet.

Mr. Chairman: I took the whole thing together. Did people understand that I was doing that?

Interjection.

Mr. Chairman: The only discussion we had was on section 10a.

Hon. Mr. Elston: In its entirety, is that it?

Mr. Chairman: Because there was no discussion, I thought I might as well do the vote on the whole thing unless you want to subdivide.

Mr. Ward: No. We want to discuss subsection 10a(2).

Mr. Chairman: Let me revise that. Can I take it as the consensus that we just unanimously supported clauses 10a(1)(a) and (b)?

Mr. Jackson: I thought we had voted on everything and that you thought we had also.

Mr. Chairman: I did, but there was a misunderstanding. We want to be clear--

Mr. Jackson: There was too much unanimity, and it threw us off.

Mr. Chairman: It is a little frightening. We will have discussion on subsection 2.

Mr. Ward: I think I have an amendment.

Mr. Chairman: He said, "I feel an amendment coming."

Mr. Jackson: And it ain't going to be friendly.

Mr. Chairman: I have a message for Mr. Laughren, which no doubt has to do with lunch.

There was some discussion that we would have to adjourn at noon today because of some people's meetings. Is that the case, or can we go a little bit longer? That is the case, so we have only another 10 minutes or so.

Mr. Ward: I move that at the end of subsection 10a(2) the following words be added:

"...or, if the Lieutenant Governor in Council is unable to ascertain the best available price for the purpose of prescribing an amount under that subsection, the Lieutenant Governor in Council shall prescribe that the amount payable is the amount actually paid by the operator of the pharmacy for the product dispensed--"

Miss Stephenson: I think you are in the wrong place.

Mr. Ward: I think I am too. "--that amount to be calculated in accordance with the regulations."

11:50 a.m.

Mr. Chairman: There are a lot of extra words. I will let you clear it up before I accept it or not. It sounds almost as though it would be better as a separate section, an exception section. I do not think you want that wording. I may be wrong.

Hon. Mr. Elston: In fact we do.

Mr. Chairman: You want that full wording?

Mr. Ward: Mr. Bernstein is working on something.

Mr. Chairman: I will need a copy. It is far too long for me to know if I have something which is in order or not in order.

Mr. Ward: Mr. Bernstein has some shorter wording.

Mr. Bernstein: I think this is what Mr. Ward meant to say--he may not thank me for this. That the following words be added: "...or, the Lieutenant Governor in Council may prescribe the amount payable by the minister is the amount actually paid by the operator of a pharmacy for dispensing the product, that amount to be calculated in accordance with the regulations."

Mr. Jackson: No, that is different.

Mr. Chairman: I have great difficulty knowing how this fits with where we are right at the moment with regard to the straight listing of--

Hon. Mr. Elston: It is pretty clear.

Mr. Chairman: Do you have the wording? What I have here is unclear because your wording, Mr. Bernstein, is quite different from what is on this typewritten sheet.

Mr. Bernstein: From where?

Mr. Chairman: You mentioned the word, "minister." That word does not show here. Can I have a copy of this please? I cannot operate with this.

Ms. Baldwin: I wrote down what he said.

Mr. Chairman: The words to be added are as follows: "...or, the Lieutenant Governor in Council may prescribe the amount payable by the minister is the amount actually paid by the operator of a pharmacy for dispensing the product, that amount to be calculated in accordance with the regulations."

Hon. Mr. Elston: The reason that this is appropriate at this particular juncture is that we do not want to have to go to delisting a drug under the provision of information that is either available or not available. We want the option to provide another mechanism for the listing. This will provide us with an option for that.

Mr. Chairman: Before we get into debate, would legal counsel like to make a comment about the verdict?

Ms. Baldwin: I gather, and the minister can correct me if I am wrong, that what is being attempted here is to say that in addition to, or instead of, what is happening in subsection 2, the Lieutenant Governor may agree to list but prescribe that the amount payable is the amount actually paid. If that is the case perhaps we should have a separate subsection 3 to deal with that to make it clear that is an alternative that could be taken.

Hon. Mr. Elston: It is the delisting that has everything to do with it.

Miss Stephenson: Do we not deal with the matters related to payment and to establishing price for payment earlier in the bill? Is it not under section 5? Surely that is the place for this kind of approach. The delisting would be understandable because of the fact that there is not a possibility of establishing--

Hon. Mr. Elston: My concern is that this mechanism under subsection 2, although it may be understandable, is impractical because the sanction imposed is the withdrawal of a product which, to a point, is available as a benefit.

You are saying that the sanction for violation of subsection 10a(1) is to take the product away from the consumer as a benefit. I am suggesting, and the amendment intends, that you do not necessarily have to delist. You can in fact keep the benefit, but you do that--because you do not have practical information--by putting it at a certain level of reimbursement, which is the actual acquisition cost.

Mr. D. S. Cooke: This section does not say that the minister has to delist. It says that one of the options available to him, in addition to the other section dealing with fines, is the possibility of delisting.

If the minister wants to come up with an amendment either to section 11, the regulatory section for setting price, or to section 5, which says that if we cannot get the best available price, another option is to put in a price made under the regulations based on acquisition costs, I would be willing to consider that. It would make much more sense under section 11 or section 5 rather than trying to put it under an enforcement mechanism.

Mr. Chairman: I concur. I just do not know what to do. It seems to me that it would be more logical to be placed in that kind of location, understanding now what its import is. Dr. Stephenson?

Miss Stephenson: Surely the requirement under subsection 10a(1)a is an agreement by the manufacturer and the wholesaler that the distribution will take place at the same quantity, at the same price, no matter where that happens in the province. What circumstance could arise under which there was no agreement or compliance with this section and which would provide for the kind of action the minister wants to take?

Mr. Chairman: I think your point in conjunction with Mr. Cooke's is that perhaps there are better areas to put in this concept.

Miss Stephenson: But it seems to me that the minister's argument is not valid.

Hon. Mr. Elston: I disagree with you, because you are saying that if the manufacturer, or whoever, does not comply, we take a benefit away from the patient. I do not want that as the only alternative. You take the benefit away by delisting the product. That is the only mechanism you have for enforcing section 10a.

Mr. D. S. Cooke: That is not true. There is another section of the legislation that provides for a \$1,000 fine. There are two options open.

Mr. Jackson: The minister himself put forth a proposal, subsection 6(1), where "the minister may make this act apply in respect of the supplying of that drug as if it were a listed drug by so notifying the physician." There are other areas within this legislation, of the minister's own construction, which give him the flexibility to overcome the fear that may or may not occur. If it does, he has several options to either motivate the drug manufacturer or to give access to the patient. He has that flexibility very clearly now within the legislation, and it has been approved by this committee so far.

We should rule that it might appear in another appropriate section, or vote it down, and attempt it at some other location.

Mr. Chairman: Mr. Cooke, I cut you off because there was another conversation.

Mr. D. S. Cooke: I have no problem with the option the minister is talking about but he should look at a different section. Let us just pass this section and move on to section 11.

Mr. Chairman: All right. There seems to be agreement on that. At this stage, Mr. Ward, will you withdraw that motion?

Mr. Ward: Is it understood that we will look for another section? If it remains, do we come back to it?

Mr. Chairman: Yes. At any time, if it does not look as though it is appropriate, we will jump back and forth; and we can do it again. This just serves to confuse the chairman even more than he is already, but that is all right. It is Friday.

Miss Stephenson: It is such an interesting exercise.

Mr. Chairman: Yes, it is. Can I then go back to the matter of subsection 10a(2) and call the vote? All those in favour of that subsection, please indicate.

Motion agreed to.

12 noon

Mr. Chairman: Section 10a as amended--no, there is no amendment.

Mr. D. S. Cooke: We took out "substances."

Miss Stephenson: You are referring to 10a(2), are you not?

Mr. Chairman: I thought we had passed the whole thing, but I was informed there was a desire to have this latest amendment. I then indicated that we had already passed clauses 10a(1)(a) and (b). We have just passed subsection 10a(2), and now I need section 10a in its entirety, as amended, be voted on.

Shall section 10a, as amended, stand as part of the bill?

Motion agreed to.

Mr. Chairman: We will adjourn until the call of the chair, which is likely to be after orders of the day on Monday, April 28.

The committee adjourned at 12:02 p.m.

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